

Chapter 8

SENTENCING

- Sec. 8-1. General conditions of sentence.
- Sec. 8-2. Determining factors.
- Sec. 8-3. Sentencing classifications; restitution or alternative compensation; offense specific penalty or sentence.
- Sec. 8-4. Failure to complete community service; imprisonment or fine.
- Sec. 8-5. Deposit and disposition of fine.
- Sec. 8-6. Probation.
- Sec. 8-7. Violation of probation.
- Sec. 8-8. Parole.
- Sec. 8-9. Violation of parole.
- Sec. 8-10. Sealing of arrest, conviction and sentencing records; requirements.

Sec. 8-1. General conditions of sentence.

(a) 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 department of corrections, ordered to complete Community service, required to pay full or partial restitution, and/or placed on probation or any combination of such.

(b) The court should impose a term of incarceration where such is needed to protect the person or the public at large.

- (1) The court shall impose a term of incarceration when the specific sentencing mandate in a particular criminal offense of the Community Code requires a mandatory minimum term of incarceration. If the Community Code provides that such incarceration cannot be deleted, deferred or suspended, then at least 50 percent of that incarceration must be served in the Salt River Department of Corrections, or at a jail or prison in another jurisdiction pursuant to an agreement based on Rule 9.2, before the defendant is eligible to serve any period of incarceration at a residential treatment facility pursuant to subsection (2).
- (2) Once the mandatory minimum term of incarceration has been served, any period of incarceration beyond that may be served at a residential treatment facility, provided the following conditions are met:
 - a. The prosecutor, the defendant, and the court determine that it would serve the ends of justice, and
 - b. The remaining period of incarceration is no less than 30 days, and no more than 180 days, and
 - c. The defendant has been admitted to a residential treatment center for treatment of substance use, a mental health diagnosis, a behavioral health diagnosis, or other diagnosis for which residential treatment is appropriate, as determined by Salt

River Behavioral Health Services or another comparable equivalent, and

- d. The defendant agrees to remain at the residential treatment center for the entire duration of the remaining term of incarceration; if the defendant leaves residential treatment or is discharged from residential treatment for noncompliance, any remaining incarceration time shall be served at the Salt River Department of Corrections; and
- e. The defendant agrees to a release of information that will allow the office of the prosecutor to monitor compliance with subsection d.

(c) 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; Ord. No. SRO-566-2023, 9-20-2023)

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 required 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)

Sec. 8-10. Sealing of arrest, conviction and sentencing records; requirements.

(a) A person may file a petition to seal all case records related to a criminal offense committed within the jurisdiction of the Salt River Community Court if the person was:

- (1) Convicted of a criminal offense and has completed all of the terms and conditions of the sentence that was imposed by the court, including the payment of all monetary obligations and restitution to all victims.
- (2) Convicted of a criminal offense and has not completed all of the terms and conditions of the sentence that was imposed by the court, but has paid restitution to all victims, if the act giving rise to the conviction would no longer constitute an offense if committed under the current Community Code of Ordinances.
- (3) Charged with a criminal offense and the charge was subsequently dismissed or resulted in a not guilty verdict at a trial.
- (4) Arrested for a criminal offense and no charges were filed.

(b) The court administrator shall provide a copy of the petition to seal case records to the prosecutor within two business days of a petition being filed. The prosecutor may respond to the petition and request a hearing. The victim has a right to be present and heard at any proceeding in which the defendant has filed a petition to seal case records. If the victim has made a request for post-conviction notice, the prosecutor shall provide the victim with notice of the defendant's petition and of the victim's rights

under this section. If the prosecutor has provided notice to the victim at the last known address, then this shall satisfy the prosecutor's obligation.

(c) The court may grant or deny a petition to seal a person's case records after 60 calendar days have elapsed since the court's receipt of the petition, unless the court receives notice that both the prosecutor and all victims who have made a request for post-conviction notice do not object to the petition. Unless the petitioner, prosecutor, or victim requests a hearing, the court may grant or deny a petition to seal case records without a hearing. The court may dismiss a petition that does not meet the requirements prescribed in this section without a hearing. The court shall grant the petition if the court determines that granting the petition is in the best interests of the petitioner and the public's safety.

(d) All case records that are sealed pursuant to this section may be:

- (1) Alleged as an element of an offense.
- (2) Used as a historical prior felony conviction.
- (3) Admissible for impeaching any party or witness in a subsequent trial.
- (4) Used to enhance the sentence for a subsequent offense.
- (5) Otherwise used as a conviction if the conviction would be admissible if the conviction was not sealed.

(e) At the time of sentencing, the court shall inform the person on the record that the person may be eligible to petition the court for an order that seals all case records of the person's arrest, conviction, and sentence that are related to the offense pursuant to this section and shall provide this notice in writing. A person who was convicted of an offense and who has not subsequently been convicted of any other offense in any jurisdiction, may petition the court to seal the person's records of arrest, conviction, and sentence after the person completes all of the terms and conditions of the person's sentence, including paying all fines, fees and restitution that are ordered by

the court, and the following period of time has passed since the person completed the conditions of probation or sentence and was discharged by the court:

(1) Ten years for a violation of the following:

- a. Section 6-82, Child abuse or aggravated child abuse.
- b. Section 6-44, Perjury.
- c. Section 6-55, Stalking.
- d. Section 6-7(b)(6), Criminal street gangs, wearing or displaying criminal street gang clothing or attire.
- e. Section 10-253(a-b), Domestic violence or aggravated domestic violence.
- f. Section 16-231(a)(1-3) or (b), Driving or actual physical control while under the influence.

(2) Five years for any other Class A offense.

(3) Three years for a Class B or Class C offense, or a criminal violation of chapter 16.

(4) Two years for a Class D or Class E offense.

(5) There is no time period requirement for a person who has been convicted of a criminal offense when the act giving rise to the conviction would no longer constitute an offense if committed under the current Community Code of Ordinances. Such petitions can be filed at any point following the enactment date of an ordinance legalizing an act that was previously illegal.

(f) Notwithstanding subsection (e) of this section, if the person has a prior historical felony conviction in any jurisdiction, the person may petition the court to seal the person's records of arrest, conviction and sentence pursuant to subsection (e) of this section after ten years has passed from the most recent conviction date.

(g) A person who is convicted of two or more offenses in any jurisdiction may not petition the court to seal the person's case records until the period of time prescribed in subsection (e) of this section has passed for each conviction.

(h) After a petition to seal case records is filed, the court shall notify the Salt River Police Department (SRPD) within two business days of a petition being filed, and request the department to prepare and submit a report to the court that includes all of the petitioner's state and federal arrests, prosecutions, and convictions and any other information that the court requests or that the department believes will assist the court in making its determination. SRPD shall provide the report to the court within ten business days of their receipt of notification from the court.

(i) If the court grants a petition to seal case records:

(1) The court shall issue an order sealing all records relating to the petitioner's arrest, conviction, and sentence and directing the court administrator to notify the office of the prosecutor and the Salt River Police Department of the sealing order.

(2) On order of the court, the court administrator shall seal all case records relating to the petitioner's arrest, conviction, and sentence. A court order to seal case records pursuant to this section is subject only to the disclosure requirements in this section and shall be treated differently than a record that is sealed pursuant to any other statute or court rule. The court administrator shall create and manage a system for sealing case records pursuant to this section, and for providing sealed case records to a prosecutor or law enforcement entity who requests the record pursuant to subsection (d), or to a person or entity that is listed in subsection (j) of this section and that requests the record. On the request of a prosecutor or law enforcement entity who requests the record pursuant to subsection (d), or an entity or person listed in

subsection (j) of this section, the clerk shall provide the requestor with any sealed case records. The clerk may not provide sealed case records pursuant to this section to any other person or entity.

- (3) The Salt River Police Department shall designate the case records as sealed within the department's records and inform all appropriate state and federal law enforcement agencies of the sealing. The department may not share or provide sealed case records with any person or entity that is not listed in subsections (j) of this section.
- (4) The arresting and prosecuting agencies shall clearly identify in each agency's files and electronic records that the petitioner's arrest or conviction and sentence records are sealed.
- (5) A person whose records are sealed pursuant to this section may state, in all instances, that the person has never been arrested for, charged with, or convicted of the crime that is the subject of the arrest or conviction, including in response to questions on employment, housing, financial aid or loan applications unless any of the following applies:
 - a. The person is submitting an application that requires a fingerprint clearance card.
 - b. The sealed case records involved burglary or theft from a residential or nonresidential structure and the person is applying for a job that requires entering into and performing services inside of a residential structure.
 - c. The sealed case records involved child abuse or aggravated child abuse, and the person is applying for a job involving supervising, educating or administering care to a minor.
 - d. The sealed case records involved vulnerable adult abuse and the person is applying for a job involv-

ing supervising or administering care to a vulnerable adult or a person who is at least 65 years of age.

- e. The sealed case records involved theft, forgery, or fraudulent schemes and artifices and the person is applying for a job involving accounting, overseeing, transporting, handling, or managing another person's money or financial assets.
- f. The person is applying for a position with a law enforcement agency, a prosecutor's office, a court, a probation department, a child welfare agency, the social services department, the legal services department as a guardian ad litem, or the department of corrections.
- g. The person is undergoing a background check for the placement with that person of a child who is in the custody of the Salt River Social Services Department or another state or local department of child safety.
- h. The disclosure is required by a state or federal law.
- i. The disclosure is required to comply with program integrity provisions of Medicare, Medicaid or any other federal health care program.

(j) If the person's case records are sealed pursuant to this section, the records shall be made available for the purposes listed in subsection (d) of this section and to the following:

- (1) The person whose records are sealed and any attorney who has filed a notice of appearance on behalf of the person whose records are sealed.
- (2) The victim in the case pursuant to section 6-11.
- (3) Any of the following if the purpose relates to the operation of the requesting party's official duties or internal hiring practices, or both:
 - a. A law enforcement agency.

- b. A prosecuting agency. On request of a person who is charged with a criminal offense or that person's attorney of record, a prosecuting agency shall provide the sealed case records of any person whom the prosecuting agency intends to call as a witness in that person's prosecution.
- c. A probation department or any agency that is responsible for the preparation of a presentence report.
- d. A court.
- e. The department of social services or a child welfare agency.
- f. The department of corrections.
- g. The court administrator or any department that is responsible for maintaining court records.

(k) If the court denies a petition to seal case records, a person may not file a new petition until three years after the date of the denial.

(l) A conviction for an offense that is committed in another jurisdiction and that if committed in the Community would not constitute an offense may not be used against the petitioner or prohibit the petitioner from having a record sealed. For the purposes of this section, the classification of an offense committed in another jurisdiction has the classification that the offense would have if committed in the Community.

(m) If the petitioner is charged with an offense after filing a petition to seal case records and the offense could result in a conviction that cannot be sealed or that could extend the time to file a petition to seal case records, the court may not grant or deny the petition until the court disposes of that charge.

(n) This section does not apply to a person who is:

- (1) Convicted of homicide in violation of section 6-52.

- (2) Convicted of any offense that has either of the following as an element of the offense:
 - a. The discharge, use or threatening exhibition of a deadly weapon or dangerous instrument.
 - b. The intentional or knowing infliction of serious physical injury on another person.
- (3) Convicted of any offense in chapter 6, article IV, division 2, sexual contact with children.
- (4) Convicted of any offense in chapter 6, article III, division 2, sexual offenses.
- (5) Convicted of discharge of a firearm at an occupied structure in violation of section 6-139.
- (6) Convicted of criminal street gangs in violation of section 6-7(b), except it does apply to a person convicted under section 6-7(b)(6).
- (7) Convicting of facilitation of a crime under section 6-12, or aiding or abetting under section 6-2, if the underlying offense involves any of the above-named offenses.
- (o) This section does not affect any of the following:
 - (1) The right of the person whose case records are sealed to appeal the conviction or sentence or to rely on it in bar of any subsequent proceeding for the same offense.
 - (2) The right of a law enforcement agency or prosecutor's office to maintain an arrest and conviction record and to communicate information regarding the sealed record of arrest or conviction to prosecuting agencies, courts, probation departments and other law enforcement agencies for a purpose listed in subsection (d) or (j) of this section or in defense of a civil action that arises out of the facts of the arrest or to the Arizona peace officer standards and training board solely to assist the board in determining the fitness of a person to serve as a peace officer, except

that in any of these cases the information may not be disclosed to any person or entity that is not listed in subsection (j) of this section.

- (3) The department of public safety or the board of fingerprinting from considering a conviction that is sealed pursuant to this section when evaluating an application for a fingerprint clearance card pursuant to state or federal law.

(p) For the purposes of this section, "case records" means all records that pertain to a person's arrest, conviction and sentence for a particular offense and that may be sealed pursuant to this section.

(Ord. No. SRO-566-2023, 9-20-2023)