

Chapter 7

EXTRADITION AND EXCLUSION

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ARTICLE I. EXTRADITION

Sec. 7-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Chief executive officer includes the governor, president, chairperson, business manager or chief administrative official who has been lawfully designated by an Indian tribal government to act in such executive capacity.

Executive authority includes any person who is the chief executive officer of a state or Indian tribe or such law enforcement, correction or probation officials or agencies of a state or Indian tribe who are by such state or Indian tribe authorized to perform the functions of demanding extradition from other jurisdictions.

Indian tribal government means any existing American Indian tribe recognized as a self-governing unit for the purposes of any federal governmental agency and which has a duly organized tribal court, court of Indian offenses, or traditional court.

President means the chief executive officer of the Community.

Prosecuting officer includes any person duly designated by legal authority to attend to the prosecution of criminal offenses on behalf of the government, including attorneys general, prosecutors, special prosecutors, district attorneys or special appointees.

State includes any state or territory, organized or unorganized, of the United States of America, including the District of Columbia.

Tribal court refers to any duly organized Indian court enforcing the laws of any American Indian Tribe pursuant to a Constitution or code of law and order, or any tribal court operating under the Code of Indian Offenses or the custom and tradition of that tribe.

Tribe is used in this chapter synonymously with the term "Indian tribal government." (Code 1976, § 145(1); Code 1981, § 7-1; Code 2012, § 7-1; Ord. No. SRO-45-77, 2-16-1977; Ord. No. SRO-101-86, 7-23-1986; Ord. No. SRO-402-2012, § 7-1, 5-30-2012)

Sec. 7-2. Fugitives from justice; duty of chief executive.

Subject to the provisions of this chapter, the provisions of the Constitution of the United States controlling, and any and all acts of Congress enacted in pursuance thereof, it is the duty of the president of the Community to have arrested and delivered to the executive authority of any state or county within the State of Arizona or other Indian tribe any person charged in that jurisdiction with a felony, who has fled from justice and is found in this tribal jurisdiction.

(Code 1976, § 145(2); Code 1981, § 7-2; Code 2012, § 7-2; Ord. No. SRO-45-77, 2-16-1977; Ord. No. SRO-68-81, 10-8-1980; Ord. No. SRO-144-92, § 1, 1-15-1992; Ord. No. SRO-402-2012, § 7-2, 5-30-2012)

Sec. 7-3. Applicability of chapter.

This article shall be applicable only in cases in which it is claimed that a felony has been committed. For purposes of this chapter, any act made a crime by the laws of any Indian tribe is a felony. (Code 1976, § 145(3); Code 1981, § 7-3; Code 2012, § 7-3; Ord. No. SRO-45-77, 2-16-1977; Ord. No. SRO-68-81, 10-8-1980; Ord. No. SRO-402-2012, § 7-3, 5-30-2012)

Sec. 7-4. Form of demand.

No demand for extradition of a person charged with crime or crimes in a state or county within the State of Arizona or another tribal jurisdiction shall be recognized by the president unless the demand is in writing alleging, except in cases arising under section 7-6, that the accused was present in the demanding jurisdiction at the time of the commission of the alleged crime, and that thereafter he or she fled from that jurisdiction. Said demand must be accompanied by a copy of an affidavit made before a tribal court judge or magistrate there, together with a copy of any

warrant which was issued thereupon; or by a copy of a judgment of conviction or of a sentence imposed in execution thereof together with a statement by the executive authority of the demanding state or county within the State of Arizona or tribe that the person sought has escaped from confinement or has broken the terms of his or her bail, probation or parole. The indictment, information or affidavit made before the tribal court judge or magistrate must substantially charge that the person has committed a crime under the law of that state or tribe; and the copy of indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the executive authority making the demand.

(Code 1976, § 145(4); Code 1981, § 7-4; Code 2012, § 7-4; Ord. No. SRO-45-77, 2-16-1977; Ord. No. SRO-144-92, § 2, 1-15-1992; Ord. No. SRO-402-2012, § 7-4, 5-30-2012)

Sec. 7-5. President may investigate case.

When a demand shall be made upon the president of the Community by the executive authority of a state or county within the State of Arizona or another Indian tribe for the surrender of a person so charged with crime, the president may call upon any prosecuting officer to investigate or assist in investigating the demand, and to report to him or her the situation and circumstances of the person sought and whether he or she should be surrendered.

(Code 1976, § 145(5); Code 1981, § 7-5; Code 2012, § 7-5; Ord. No. SRO-45-77, 2-16-1977; Ord. No. SRO-144-92, § 3, 1-15-1992; Ord. No. SRO-402-2012, § 7-5, 5-30-2012)

Sec. 7-6. Extradition of persons imprisoned or awaiting trial in a state or another tribe or who have left the demanding jurisdiction under compulsion.

(a) When it is desired to have returned to the Community a person who is charged in this jurisdiction with a crime, and that person is imprisoned or is held under criminal proceedings then pending against him or her in a state or other tribe, the president of the Community may agree with the executive authority of such state or

tribe for the extradition of that person before the conclusion of those proceedings or his or her term of sentence in the other state or tribe, upon the condition that the person be returned to the other state or tribe at the expense of the Community as soon as the prosecution is terminated in this jurisdiction.

(b) The president may also surrender, on the demand of the executive secretary of any state or other tribe, any person in this jurisdiction who is charged in the manner provided in section 7-23 with having violated the laws of the state or tribe whose executive authority is making the demand, even though such person left the demanding jurisdiction involuntarily.

(Code 1976, § 145(6); Code 1981, § 7-6; Code 2012, § 7-6; Ord. No. SRO-45-77, 2-16-1977; Ord. No. SRO-402-2012, § 7-6, 5-30-2012)

Sec. 7-7. Extradition of persons not present in demanding jurisdiction at time of commission of crime.

The president may also surrender, on demand of the executive authority of any state or county within the State of Arizona or other tribe, any person in this jurisdiction who is charged in such other state or tribe in the manner provided in section 7-3 with committing an act in this jurisdiction or in another state or another tribe, which intentionally resulted in a crime occurring in the jurisdiction whose executive authority is making the demand. The provisions of this chapter not otherwise inconsistent shall apply to such cases, even though the accused was not in that jurisdiction at the time of the commission of the crime, and has not fled therefrom.

(Code 1976, § 145(7); Code 1981, § 7-7; Code 2012, § 7-7; Ord. No. SRO-45-77, 2-16-1977; Ord. No. SRO-144-92, § 4, 1-15-1992; Ord. No. SRO-402-2012, § 7-7, 5-30-2012)

Sec. 7-8. Issue of president's warrant of arrest; recitals of fact.

If the president decides that the demand should be complied with, he or she shall sign a warrant of arrest which shall be directed to any police officer or other person whom he or she may deem fit to

entrust with the execution thereof. The warrant must substantially set forth the facts necessary to the validity of its issuance.

(Code 1976, § 145(8); Code 1981, § 7-8; Code 2012, § 7-8; Ord. No. SRO-45-77, 2-16-1977; Ord. No. SRO-402-2012, § 7-8, 5-30-2012)

Sec. 7-9. Manner and place of execution of warrant.

Such warrant shall authorize the police officer or other person to whom directed, to arrest the accused at any time and any place where he or she may be found within the tribal jurisdiction and to command the aid of all police officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provision of this chapter to the duly authorized agent of the demanding state or tribe.

(Code 1976, § 145(9); Code 1981, § 7-9; Code 2012, § 7-9; Ord. No. SRO-45-77, 2-16-1977; Ord. No. SRO-402-2012, § 7-9, 5-30-2012)

Sec. 7-10. Authority of arresting officer.

Every such officer or other person empowered to make the arrest shall have the same authority in arresting the accused to command assistance therein, as police officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance.

(Code 1976, § 145(10); Code 1981, § 7-10; Code 2012, § 7-10; Ord. No. SRO-45-77, 2-16-1977; Ord. No. SRO-402-2012, § 7-10, 5-30-2012)

Sec. 7-11. Rights of accused person; application for writ of habeas corpus.

No person arrested upon such warrant shall be delivered over to a duly designated agent of the demanding executive authority unless he or she shall first be taken forthwith before a Community court judge in this jurisdiction, who shall inform him or her of the demand made for his or her surrender. He or she must also be advised of the crime of which he or she is charged, and his or her right to demand and procure legal counsel. If the prisoner or his or her counsel desire to test the legality of his or her arrest, the judge of such court shall fix a reasonable time for him or her to

apply for a writ of habeas corpus. When such writ is applied for, notice thereof, and of time and place of hearing thereon shall be given to the prosecuting officer and to the said agent of the demanding state or tribe. At the hearing the judge may inquire into whether the accused can receive a fair trial in the demanding jurisdiction. If the judge determines that the accused probably cannot receive a fair trial in the demanding jurisdiction, then he or she shall release the accused from custody forthwith or hold a hearing early to determine if a fair trial can be had.

(Code 1976, § 145(11); Code 1981, § 7-11; Code 2012, § 7-11; Ord. No. SRO-45-77, 2-16-1977; Ord. No. SRO-402-2012, § 7-11, 5-30-2012)

Sec. 7-12. Penalty for noncompliance with section 7-11.

Any officer who shall wrongfully deliver to the agent of the demanding state or tribe a person in his or her custody in willful disobedience of this chapter shall be guilty of an offense and, upon conviction, shall be fined not more than \$500.00 or be imprisoned not more than six months, or both.

(Code 1976, § 145(12); Code 1981, § 7-12; Code 2012, § 7-12; Ord. No. SRO-45-77, 2-16-1977; Ord. No. SRO-402-2012, § 7-12, 5-30-2012)

Sec. 7-13. Confinement in jail when necessary.

(a) The officer executing the president's warrant of arrest or the agent of the demanding jurisdiction to whom the prisoner may have been delivered may, when necessary, confine the prisoner in the Community jail or any other existing facility for detention of Community prisoners; and the keeper of such jail must receive and safely keep the prisoner until the officer having charge of him or her proceeds on his or her route, such officer or agent being chargeable with the expense of keeping.

(b) The officer or agent of a demanding jurisdiction to whom a prisoner may have been delivered, following extradition proceedings in another state or another Indian tribe, or who may have jurisdiction over a prisoner, and who is merely passing through this jurisdiction with the pris-

oner for the purpose of immediately returning him or her to the demanding jurisdiction, may, when necessary, confine the prisoner in the Community jail or other detention facility. The keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him or her proceeds on his or her route. The officer or agent is responsible for the expense of keeping his or her prisoner; however, such officer or agent shall produce and show to the keeper of the jail satisfactory written evidence of the fact that he or she is actually transporting the prisoner to the demanding jurisdiction with legal authority. Such prisoner shall not be entitled to demand a new requisition while in the Community jurisdiction. (Code 1976, § 145(13); Code 1981, § 7-13; Code 2012, § 7-13; Ord. No. SRO-45-77, 2-16-1977; Ord. No. SRO-402-2012, § 7-13, 5-30-2012)

Sec. 7-14. Arrest prior to requisition.

Whenever any person within the Community is charged, by the oath of a credible person given before a judge of the Community, with having committed a crime in any state or in another tribe and, except in cases arising under section 7-6, with having fled from justice, or with having been convicted of a crime in that jurisdiction and having escaped from confinement, or having broken the terms of his or her bail, probation or parole; or whenever a complaint is made before a Community judge in this tribe on the affidavit of a credible person in another jurisdiction stating that a crime has been committed in that jurisdiction and that the accused has been charged with having committed that crime and, except in cases arising under section 7-6, has fled from justice, or that the accused has been convicted of a crime and has escaped from confinement, or that the accused has broken the terms of his or her bail, probation or parole, and is believed to be in this jurisdiction; such Community court judge shall issue a warrant directed to any police officer commanding him or her to apprehend the named person in this jurisdiction and to bring him or her before the Community court to answer the foregoing charges. A certified copy of the sworn charge of complaint and affidavit shall be attached to the warrant.

(Code 1976, § 145(14); Code 1981, § 7-14; Code 2012, § 7-14; Ord. No. SRO-45-77, 2-16-1977; Ord. No. SRO-402-2012, § 7-14, 5-30-2012)

Sec. 7-15. Arrest without a warrant.

The arrest of a person may be lawfully made by any police officer without a warrant, upon reasonable information that the accused stands charged in the courts of a state or other tribe with a crime punishable by death or imprisonment for a term exceeding one year. When arrested, the accused must be taken before a Community judge with all practicable speed and a complaint must be made against him or her under oath setting forth the grounds for the arrest as if he or she had been arrested as in the section 7-14; and thereafter his or her answer shall be heard as if he or she had been arrested on warrant.

(Code 1976, § 145(15); Code 1981, § 7-15; Code 2012, § 7-15; Ord. No. SRO-45-77, 2-16-1977; Ord. No. SRO-402-2012, § 7-15, 5-30-2012)

Sec. 7-16. Commitment to await requisition; bail.

If from the examination before the Community judge it appears that the person held is the same person who is charged with having committed the alleged crime and, except in cases arising under section 7-6, that he or she has fled from justice, the judge must, by a warrant reciting the accusation, commit him or her to the Community jail for a period of time not to exceed 30 days in order to enable the arrest of the accused to be made by the proper requisition procedures of the state or tribe having jurisdiction of the offense, subject to bail as provided in the next section, or until his or her legal discharge.

(Code 1976, § 145(16); Code 1981, § 7-16; Code 2012, § 7-16; Ord. No. SRO-45-77, 2-16-1977; Ord. No. SRO-402-2012, § 7-16, 5-30-2012)

Sec. 7-17. Bail; in what cases; conditions of bond.

Unless the offense with which the prisoner is charged is punishable by death or life imprisonment under the laws of the state or tribe in which it was committed, a Community court judge in the Community may grant the person arrested bail, in such sum as he or she deems proper, conditioned for the prisoner's appearance at a time

specified in such bond, and for his or her surrender, for arrest upon the warrant of the president of the Community.

(Code 1976, § 145(17); Code 1981, § 7-17; Code 2012, § 7-17; Ord. No. SRO-45-77, 2-16-1977; Ord. No. SRO-402-2012, § 7-17, 5-30-2012)

Sec. 7-18. Extension of time of commitment; adjournment.

If the accused has not been arrested under a warrant of the president by the expiration date as specified by the Community judge in accordance with section 7-15, such judge may discharge the prisoner, recommit him or her for a period not to exceed 60 days, or grant bail for this recommitment period as provided in section 7-16.

(Code 1976, § 145(18); Code 1981, § 7-18; Code 2012, § 7-18; Ord. No. SRO-45-77, 2-16-1977; Ord. No. SRO-402-2012, § 7-18, 5-30-2012)

Sec. 7-19. Forfeiture of bail.

If the prisoner is admitted to bail, and fails to appear and surrender himself or herself according to the conditions of his or her bond, the tribal judge by proper order shall declare the bond forfeited and order his or her immediate arrest without warrant if he or she is within the Community's jurisdiction. Recovery may be had on such bond in the name of the Community as in the case of other bonds given by the accused in criminal proceedings.

(Code 1976, § 145(19); Code 1981, § 7-19; Code 2012, § 7-19; Ord. No. SRO-45-77, 2-16-1977; Ord. No. SRO-402-2012, § 7-19, 5-30-2012)

Sec. 7-20. Persons under criminal prosecution in the Community at time of requisition.

If a criminal prosecution has been instituted against such person under the laws of the Community and is still pending, the chief executive officer, at his or her discretion, may either surrender him or her on demand of the executive authority of a state or county within the State of Arizona or other Indian tribe, or hold him or her until he or she has been tried and discharged or convicted and punished by the Community.

(Code 1976, § 145(20); Code 1981, § 7-20; Code 2012, § 7-20; Ord. No. SRO-45-77, 2-16-1977; Ord. No. SRO-144-92, § 5, 1-15-1992; Ord. No. SRO-402-2012, § 7-20, 5-30-2012)

Sec. 7-21. Guilt or innocence of accused; when inquired into.

Neither the president nor the Community court may inquire into the guilt or innocence of the accused, in any proceeding after the demand for extradition, except to identify the accused as the person who is charged with the crime and to ascertain if reasonable cause exists for such extradition.

(Code 1976, § 145(21); Code 1981, § 7-21; Code 2012, § 7-21; Ord. No. SRO-45-77, 2-16-1977; Ord. No. SRO-402-2012, § 7-21, 5-30-2012)

Sec. 7-22. President may recall warrant or issue alias.

The president may recall his or her warrant of arrest or may issue another warrant whenever he or she deems proper.

(Code 1976, § 145(22); Code 1981, § 7-22; Code 2012, § 7-22; Ord. No. SRO-45-77, 2-16-1977; Ord. No. SRO-402-2012, § 7-22, 5-30-2012)

Sec. 7-23. Fugitives from the Community; duty of president.

Whenever the president of the Community shall demand a person charged with crime or with escaping from confinement or breaking the terms of his or her bail, probation or parole in the Community, from the executive authority of any state or other tribe, or from the Chief Justice or as Associate Justice of the Supreme Court of the District of Columbia authorized to receive such demand under the laws of the United States, he or she shall issue a warrant to some agent, commanding him or her to receive the person so charged if delivered to him or her and convey him or her to the proper officer of this tribe.

(Code 1976, § 145(23); Code 1981, § 7-23; Code 2012, § 7-23; Ord. No. SRO-45-77, 2-16-1977; Ord. No. SRO-402-2012, § 7-23, 5-30-2012)

Sec. 7-24. Application for issuance of requisition; by whom made; contents.

(a) When a return to the Community of a person charged with crime in this jurisdiction is required, the prosecuting officer shall present to the president his or her written application for a requisition for the return of the person charged,

in which application shall be stated the name of the person so charged, the crime charged against him or her, the approximate time, place and circumstances of its commission, the jurisdiction in which he or she is believed to be, including the location of the accused therein at the time the application is made, and certifying that, in the opinion of the said prosecuting officer, the ends of justice require the arrest and return of the accused to this tribe for trial and that the proceeding is not instituted to enforce a private claim.

(b) When the return to the Community is required of a person who has been convicted of a crime in the Community and has escaped from confinement or broken the terms of his or her bail, probation or parole, the prosecuting officer shall present to the governor a written application for a requisition for the return of such person, setting forth the name of the person, the crime of which he or she was convicted, the circumstances of his or her escape from confinement or of the breach of the terms of his or her bail, probation or parole, the jurisdiction in which he or she is believed to be, including the location of the person therein at the time application is made.

(c) The application shall be verified by affidavit, executed in duplicate and accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the Community court judge, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The prosecuting officer may also attach such further affidavits and documents in duplicate as he or she shall deem proper to be submitted with such application. One copy of the application, with the action of the president endorsement thereon, and one of the certified copies of the indictment, complaint, information and affidavits, or of the judgment of conviction or of the sentence shall be filed in the office of the Community secretary, to remain on record in that office. The other copies of all papers shall be forwarded with the president's requisition.

(Code 1976, § 145(24.4); Code 1981, § 7-24; Code 2012, § 7-24; Ord. No. SRO-45-77, 2-16-1977; Ord. No. SRO-402-2012, § 7-24, 5-30-2012)

Sec. 7-25. Costs and expenses.

In all cases where the punishment of the crime includes confinement, the expenses shall be paid out of the Community's treasury on the certification of the president. The expenses shall be the fees paid to the officers of the tribe or state on whose executive authority the requisition is made, and not exceeding the mileage fee then in effect by council policy for all necessary travel in returning such prisoner.

(Code 1976, § 145(25); Code 1981, § 7-25; Code 2012, § 7-25; Ord. No. SRO-45-77, 2-16-1977; Ord. No. SRO-402-2012, § 7-25, 5-30-2012)

Sec. 7-26. Immunity from service of process in certain civil actions.

A person returned to the Community by or after waiver of extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceedings for which he or she has been returned, until he or she has been convicted in the criminal proceedings, or, if acquitted, until he or she has had reasonable opportunity to return to the state or tribe from which he or she was extradited.

(Code 1976, § 145(26); Code 1981, § 7-26; Code 2012, § 7-26; Ord. No. SRO-45-77, 2-16-1977; Ord. No. SRO-402-2012, § 7-26, 5-30-2012)

Sec. 7-27. Written waiver of extradition proceedings.

(a) Any person arrested in the Community who is charged with having committed any crime in a state or other tribe or alleged to have escaped from confinement, or broken the terms of his or her bail, probation, or parole may waive the issuance and service of the warrant provided for in sections 7-8 and 7-9 and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a Community court judge a writing which states that he or she consents to return to the demanding jurisdiction; however, before such waiver shall be executed or subscribed by such person, it shall be the duty of such judge to inform such person of all his or her rights including the right to the issuance or

service of a warrant of extradition and his or her right to obtain a writ of habeas corpus as provided in section 7-11.

(b) If and when such consent has been duly executed it shall forthwith be forwarded to the office of the president of the Community and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state or tribe and shall deliver or cause to be delivered to such agent or agents a copy of such consent; however, nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding jurisdiction, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights, or duties of the officers of the demanding jurisdiction or of the Community.

(Code 1976, § 145(27); Code 1981, § 7-27; Code 2012, § 7-27; Ord. No. SRO-45-77, 2-16-1977; Ord. No. SRO-402-2012, § 7-27, 5-30-2012)

Sec. 7-28. Nonwaiver by the Community.

Nothing in this chapter contained shall be deemed to constitute a waiver by the Community of its sovereignty or rights, powers or privileges to try such demanded person for crime committed within this jurisdiction, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence or punishment for any crime committed within this jurisdiction. Nor shall any proceedings had under this chapter which result in, or fail to result in, extradition be deemed a waiver by this tribe of any of its sovereignty or rights, privileges or jurisdiction in any way whatsoever.

(Code 1976, § 145(28); Code 1981, § 7-28; Code 2012, § 7-28; Ord. No. SRO-45-77, 2-16-1977; Ord. No. SRO-402-2012, § 7-28, 5-30-2012)

Sec. 7-29. No right of asylum; no immunity for other criminal prosecutions while in this jurisdiction.

After a person has been brought back to the Community by or after waiver of extradition proceedings, he or she may be tried in this juris-

diction for other crimes which he or she may be charged with having committed here as well as those specified in the requisition for his or her extradition.

(Code 1976, § 145(29); Code 1981, § 7-29; Code 2012, § 7-29; Ord. No. SRO-45-77, 2-16-1977; Ord. No. SRO-402-2012, § 7-29, 5-30-2012)

Secs. 7-30—7-48. Reserved

ARTICLE II. DETAINEE AS A WITNESS IN A CRIMINAL PROCEEDING IN A FOREIGN JURISDICTION

Sec. 7-49. Temporary removal or transfer of a detainee to attend as a witness in a criminal proceeding in a foreign jurisdiction.

(a) When the testimony of a material witness is required by the prosecution or defendant in a criminal action before a court in a foreign jurisdiction and the witness is a detainee in the custody of the Community department of corrections, the Community court may issue an order for the detainee's temporary removal from the Community department of corrections and from the boundaries of the Community to attend a court proceeding in a foreign jurisdiction, unless the detainee is a minor under the age of 15 years.

(b) The Community office of the prosecutor shall petition the Community court for temporary removal of the detainee from the Community department of corrections and the Community. The petition for temporary removal shall include an affidavit from the attorney representing the prosecution or defendant. The affidavit shall include the following:

- (1) A statement that the detainee's testimony is material and necessary.
- (2) If the request for the detainee's presence is from a prosecuting office, then the affidavit shall also include a statement that the laws of the foreign jurisdiction shall protect the detainee from arrest and the service of civil and criminal process.

(c) An order granting the temporary removal of a detainee is in the discretion of the Community court.

- (1) The Community court shall make its determination within 48 hours of receipt of the petition from the Community office of the prosecutor.
- (2) The Community court may make its determination on the record and without a hearing provided the Community court is satisfied that the petition and affidavit comply with subsection (b)(1) and (2) of this section, and the decisional process would not be significantly aided by holding a hearing.

(d) The Community office of the prosecutor shall also serve the detainee and the Community department of corrections copies of the petition and affidavit upon filing the petition before the court.

(e) The detainee may request the assistance of legal counsel upon receipt of the petition filed by the Community office of the prosecutor.

(f) An order granting temporary removal of a detainee shall be executed by the Community police department, who shall transport the detainee to and before the foreign court.

- (1) The Community police department shall keep the detainee safe and when the detainee is no longer required as a witness, the detainee shall be returned to the Community department of corrections.
- (2) The Community police department shall immediately notify the Community court in writing when the detainee has been returned to the custody of the Community department of corrections.

(Code 1981, § 7-50; Code 2012, § 7-50; Ord. No. SRO-378-2011, 3-23-2011; Ord. No. SRO-402-2012, § 7-50, 5-30-2012)

Secs. 7-50—7-71. Reserved.

ARTICLE III. EXCLUSION FROM COMMUNITY TERRITORY

Sec. 7-72. Power to exclude persons from Community territory.

The Community has the authority to exclude persons and entities from its territory. This exclusionary authority is a fundamental sovereign attribute intimately tied to the Community's ability to protect the integrity and order of its territory and the welfare of its members.

(Code 2012, § 7-60; Ord. No. SRO-402-2012, § 7-60, 5-30-2012)

Sec. 7-73. Removal of trespassers.

All persons, hunting, fishing, cutting wood, driving livestock, peddling or doing any commercial business on a trust Indian allotment without the permission of the owner or on Community land in the Community, without the permission of the Community Council may be prosecuted under Community law, forcibly ejected from the Community by a police officer, officer of the United States Indian Service or Community officer, and/or may be turned over to the custody of the United States marshal or sheriff or other officer of the State of Arizona for prosecution under federal or state law.

(Code 1976, § 7.11; Code 1981, § 2-4; Code 2012, § 7-61; Ord. No. SRO-402-2012, § 7-61, 5-30-2012)

Sec. 7-74. Removal of nonmember lawbreakers.

Any person not a member of the Community who within the Community commits any act which is a crime under Community, federal or state law may be prosecuted under Community law, forcibly ejected from the Community by any police officer, officer of the United States Indian Service or Community police officer, and or may be turned over to the custody of the United States marshal or sheriff or other officer of the State of Arizona for prosecution under federal or state law.

(Code 1976, § 7.12; Code 1981, § 2-5; Code 2012, § 7-62; Ord. No. SRO-402-2012, § 7-62, 5-30-2012)

Sec. 7-75. Removal of nonmembers who are detrimental to the Community.

(a) *Policy.* It is the policy of the Community to remove and exclude from the Community nonmembers whose presence is detrimental to the peace, health or morals of the Community, or who violate the laws of the Community.

(b) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Charged person means any nonmember:

- (1) Who, having been charged by the Community department of public safety with a violation of a crime as defined by this Community Code of Ordinances, either refuses to waive any claimed right of immunity from trial by the Community court, or having waived such claimed right is convicted of such an offense; or
- (2) Who has been charged by the Community department of public safety as a person whose presence within the Community is detrimental to the peace, health or morals of the Community in a written report delivered to the president or vice president of the Community.

Nonmember means any person not listed on the membership rolls of the Community.

(c) *Report of charged person.*

- (1) The Community department of public safety or any member of the Community shall report to the president or vice president of the Community the name of any charged person and request that action be taken by the Community Council to remove and exclude such person from the Community.
- (2) After receipt of such report and request, the president or vice president shall notify the Community Council at its next scheduled meeting of the report and request from the department of public safety and request that an inquiry be undertaken in regard to the report and request.

(d) *Committee of inquiry and council determination.*

- (1) Upon notice of the receipt of the report and request, the Community Council will appoint a committee of inquiry composed of one of its members, as chairperson, a director of a Community government department and a Community member not employed by Community government, to determine whether the report is accurate, and if accurate, the recommendation of the committee to the Community Council as to whether the charged person ought to be removed and excluded from the Community.
- (2) After receipt of the recommendation of the committee of inquiry, the Community Council shall decide whether to remove and exclude the charged person. The council's order shall be in writing and served upon the charged person in person or by U.S. mail.

(e) *Procedure.*

- (1) The committee of inquiry shall notify the charged person of the report and request and of the appointment of the committee. The notice shall set the time and place for a hearing by the committee, shall state that the charged person shall have a right to an advocate or counsel and shall state that the hearing will be conducted informally. The recommendation of the committee of inquiry shall be in writing and transmitted to the Community Council, the person making the report and request, and the charged person.
- (2) Any person to whom the recommendation is transmitted may within five days of receipt of the recommendation file a petition with the Community Council supporting or objecting to the recommendation. Any such petition may be responded to within five days by any person who has been sent a copy of the recommendation by the committee. A copy of any petition or response shall be delivered or mailed to the other parties.

- (3) After the time for the filing of petitions and responses has expired, the Community Council shall make its determination and shall issue its order respecting the issue of removal and exclusion.
- (4) At any time after notice has been given to the Community Council, it may, without a hearing and upon a finding that the charged person represents a present and substantial danger to the Community, order the removal and exclusion of the charged person until the Community Council's final determination is made. Notwithstanding such a temporary order, the charged person may appear at all hearings of the committee of inquiry as if no such order had been issued.
- (5) The Community Council has exclusive jurisdiction over removal and exclusion proceedings; and no court shall have jurisdiction to hear a complaint against or appeals of its determination and order, either directly or collaterally.

(Code 1981, § 2-6; Code 2012, § 7-63; Ord. No. SRO-135-91, §§ 1—5, 11-7-1990; Ord. No. SRO-402-2012, § 7-63, 5-30-2012)