

**SALT RIVER PIMA-MARICOPA  
INDIAN COMMUNITY**  
10,005 East Osborn Road  
Scottsdale, Arizona 85256

**ORDINANCE NUMBER SRO-566-2023**

**AN AMENDMENT TO CHAPTER 8, SECTION 8-1 AND THE ADDITION OF SECTION 8-10 OF THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY CODE OF ORDINANCES TO SET FORTH A UNIFORM PROCEDURE ALLOWING INCARCERATION TO BE SERVED AT A RESIDENTIAL TREATMENT FACILITY AND FOR THE SEALING OF ARREST, CONVICTION, AND SENTENCING RECORDS IN THE COMMUNITY COURT.**

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Chapter 8, Section 8-1 of the Salt River Pima-Maricopa Indian Community Code of Ordinances is hereby amended and Chapter 8, Section 8-10 of the Salt River Pima-Maricopa Indian Community Code of Ordinances is added, effective as of October 1, 2023, to read as follows:

**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:
    - i) the prosecutor, the defendant, and the court determine that it would serve the ends of justice, and

ii) the remaining period of incarceration is no less than 30 days, and no more than 180 days, and

iii) 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

iv) 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

v) the defendant agrees to a release of information that will allow the Office of the Prosecutor to monitor compliance with subsection (iv).

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.

#### **Section 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 (2) 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 sixty (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 (10) years for a violation of the following:
  - i) Section 6-82, Child abuse or aggravated child abuse.
  - ii) Section 6-44, Perjury.
  - iii) Section 6-55, Stalking.
  - iv) Section 6-7(b)(6), Criminal street gangs, wearing or displaying criminal street gang clothing or attire.
  - v) Section 10-253(a-b), Domestic violence or aggravated domestic violence.
  - vi) Section 16-231(a)(1-3) or (b), Driving or actual physical control while under the influence.

2) Five (5) years for any other Class A Offense.

3) Three (3) 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 (10) 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 (2) 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 (10) 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:

i) The person is submitting an application that requires a fingerprint clearance card.

ii) 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.

iii) 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.

iv) The sealed case records involved vulnerable adult abuse and the person is applying for a job involving supervising or administering care to a vulnerable adult or a person who is at least sixty-five years of age.

v) 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.

vi) 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.

vii) 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.

viii) The disclosure is required by a state or federal law.

ix) 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:

- i) A law enforcement agency.
- ii) 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.
- iii) A probation department or any agency that is responsible for the preparation of a presentence report.
- iv) A court.
- v) The department of social services or a child welfare agency.
- vi) The department of corrections.
- vii) 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:
  - i) The discharge, use or threatening exhibition of a deadly weapon or dangerous instrument.

ii) 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.

## C\_E\_R\_T\_I\_F\_I\_C\_A\_T\_I\_O\_N

This ordinance is hereby enacted pursuant to the authority contained in Article VII Section 1(c)(1) of the Constitution of the Salt River Pima-Maricopa Indian Community ratified by the Tribe on February 28, 1990 and approved by the Secretary of the Interior on March 19, 1990 and amended by the Tribe on February 27, 1996 and approved by the Secretary on April 23, 1996, the foregoing ordinance was approved on the 20<sup>th</sup> day of September, 2023 in a duly called meeting held by the Community Council in Salt River/Lehi Arizona at which a quorum of 9 members were present by a vote of 9 for 0 opposed 0 abstentions 0 excused.

### SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY COUNCIL

  
Ricardo Leonard, Vice-President

#### ATTEST:

  
Erica Harvier, Council Secretary

Approved as to Form by the  
Office of the General Counsel  
Jeff Harmon  
September 15, 2023

