



DEPARTMENT OF LAW  
OFFICE OF THE  
**Attorney General**  
STATE CAPITOL  
Phoenix, Arizona 85007

John A. LaSota, Jr.  
~~XXXXXXXXXXXX~~  
ATTORNEY GENERAL

October 2, 1978

Jim Martin, Pima County  
Courts Administrator  
111 West Congress  
Tucson, Arizona 85701

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**ARIZONA ATTORNEY GENERAL**

Re: **178-233** (R77-376)

Dear Mr. Martin:

On October 28, 1977, you requested the opinion of this Office on the following two questions:

1. May justice courts and magistrate courts exercise the power under A.R.S. § 13-1657 (Supp. 1977) to impose up to two years' probation on defendants who are convicted of misdemeanors?
2. How does Arizona new Criminal Code, effective October 1, 1978, affect the permissible periods of time for which justice courts and magistrate courts may impose probation?

Answers:

1. Yes.
2. See body of Opinion.

Misdemeanor Probation Under  
A.R.S. § 13-1657 (Supp. 1977)

Before its 1977 amendment, A.R.S. § 13-1657 provided in pertinent part:

A. If it appears that there are circumstances in mitigation of the punishment, or that the ends of justice will be subserved thereby, the court may, in its discretion, place the defendant upon probation in the manner following:

1. The court may suspend the imposing of sentence and may direct that the suspension continue for such period of time, not exceeding the maximum term of sentence which may be imposed, and upon such terms and conditions as the court determines, and shall place such person on probation, under the charge and supervision of the probation officer of the court during such suspension. The conditions imposed may include incarceration in the county jail for a specified period not to exceed one year, or a fine not exceeding the amount of fine authorized for the offense.

In Laws 1977, Ch. 105, § 1, the Legislature amended A.R.S. § 13-1657(A)(1) to add the following language:

The court may suspend the imposing of sentence in misdemeanor cases and may direct that the suspension continue for a period of up to two years, even though the maximum term of sentence which may be imposed is up to one year or less, and shall place such person on probation on such terms and conditions as the court determines under the charge and supervision of the probation officer of the court during such suspension. The conditions imposed for a misdemeanor may include incarceration in the county jail for a specified period not to exceed one-half of the maximum time allowed for the offense or a fine not exceeding the amount of fine authorized for the offense.

(Emphasis added.)

In Peterson v. Flood, 84 Ariz. 256, 326 P.2d 845 (1958), the Arizona Supreme Court held that the word "court" was a generic term embracing "judge or justice," and that A.R.S. § 13-1657 (1956)<sup>1</sup> therefore applied to the justice courts

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1. A.R.S. § 13-1657(A)(1) (1956) is virtually identical to the first sentence of A.R.S. § 13-1657(A)(1) (Supp.1977).

and operated to confer on them

. . . the power to suspend the imposition  
of sentence and place defendants on probation.

84 Ariz. at 260.

See Atty.Gen.Op. 72-1-L (1971). The Legislature has never acted to negate or overrule Peterson v. Flood, *supra*, though it has altered and amended A.R.S. § 13-1657 on three occasions. See Laws 1970, Ch. 143, § 1; Laws 1976, Ch. 134, § 3; Laws 1977, Ch. 105, § 1. Further, the 1977 amendment to A.R.S. § 13-1657 continued the use of the generic term "court" in defining the nature and scope of the probation option for misdemeanants. We therefore conclude that the interpretation of A.R.S. § 13-1657 set forth in Peterson v. Flood, *supra*, has retained its vitality, and that A.R.S. § 13-1657 (Supp. 1977) applies to the justice courts en toto<sup>2</sup>. See Jackson v. Northland Construction Co., 111 Ariz. 387, 531 P.2d 144 (1975); State v. Superior Court, 104 Ariz. 440, 454 P.2d 982 (1969); Madrigal v. Industrial Commission, 69 Ariz. 138, 210 P.2d 967 (1949).

The power to suspend imposition of sentence for up to two years in misdemeanor cases is within the constitutional jurisdiction of justice and magistrate courts. Article 6, § 32 of the Arizona Constitution provides in pertinent part:

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2. The same conclusion is required for magistrate courts, whose jurisdiction is coextensive with that of justice courts within the territorial limits of the municipalities under whose authority they were established. A.R.S. § 22-402(B); City Court v. State ex rel. Baumert, 115 Ariz. 351, 565 P.2d 531 (App. 1977).

The jurisdiction, powers and duties of courts inferior to the superior court and of justice courts, and the terms of office of judges of such courts and justices of the peace shall be as provided by law. \* \* \* Criminal jurisdiction shall be limited to misdemeanors. The jurisdiction of such courts shall not encroach upon the jurisdiction of courts of record but may be made concurrent therewith, subject to the limitations provided in this section.<sup>3</sup>

Pursuant to the command of this provision, A.R.S. § 22-301 has defined the jurisdiction of justice courts as follows:

The justice of the peace courts shall have jurisdiction of the following offenses committed within their respective precincts in which such courts are established, subject only to the right to change of venue as provided by law:

1. Petty theft.
2. Assault or battery not charged to have been committed upon a public officer in the discharge of his duties, or to have been committed with such intent as to render the offense a felony.
3. Breaches of the peace, routs, affrays and committing a wilful injury to property.

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3. Ariz.Const.Art. 6, § 14 provides in part:

The superior court shall have original jurisdiction of: \* \* \*

4. Criminal cases amounting to felony, and cases of misdemeanor not otherwise provided for by law.

4. Misdemeanors and criminal offenses punishable by a fine not exceeding three hundred dollars, or imprisonment in the county jail not to exceed six months, or by both such fine and imprisonment. A penalty assessment levied pursuant to § 36-142 or 41-1826 shall not be considered as part of the fine for purposes of determining jurisdiction.
5. Felonies, but only for the purpose of commencing action and conducting proceedings through preliminary examinations and to hold the defendant to answer to the superior court or to discharge the defendant if it appears that there is not probable cause to believe the defendant guilty of an offense.<sup>4</sup>

Under Ariz.Const.Art. 6, § 32 and A.R.S. § 22-301 (1)-(4), the justice courts and magistrate courts have trial jurisdiction over the set of all criminal offenses with the characteristics set forth in A.R.S. § 22-301 (1)-(4). In W.W. Brookzner Co. v. State, 14 Ariz. 546, 132 P. 1136 (1913), the Arizona Supreme Court stated:

The test of the jurisdiction in this case, as in all others, is whether the maximum penalty that may be imposed upon convictions is greater than [the justice of the peace] is authorized to inflict. If the penalty may be greater than the maximum that he can impose, then he is without jurisdiction.

14 Ariz. at 547.

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4. A.R.S. § 12-123(A) provides: The superior court shall have original and concurrent jurisdiction as conferred by the constitution, and concurrent jurisdiction with justice of the peace of misdemeanors where the penalty does not exceed a fine of three hundred dollars or imprisonment for six months.

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Accord, Frazier v. Terrill, 65 Ariz. 131, 175 P.2d 438 (1946). See also State ex rel. Larson v. Farley, 106 Ariz. 119, 471 P.2d 731 (1970); City Court v. State ex rel. Baumert, supra, n.2. That A.R.S. § 13-1657(A)(1) (Supp. 1977) enables justice and magistrate courts to suspend the imposition of sentence for misdemeanor offenses within A.R.S. § 22-301 (1)-(4) does not operate to negate or remove any of the defining criteria for such offenses under A.R.S. § 22-301 (1)-(4); hence, it does not place them beyond the jurisdiction of such courts. Stated differently, as long as the particular misdemeanor in question is within A.R.S. § 22-301 (1)-(4), justice or magistrate courts' exercise of the power conferred on them by A.R.S. § 13-1657(A)(1) (Supp. 1977) does not constitute an act in excess of such courts' constitutional and statutory jurisdiction. Moreover, the justice and magistrate courts do not "encroach" on the jurisdiction of the superior court by exercising power under A.R.S. § 13-1657 (A)(1) (Supp. 1977), because the superior court may exercise precisely the same power in any such case. A.R.S. §§ 12-123; 13-1657(A)(1) (Supp. 1977).

Effect of New Criminal Code,  
Effective October 1, 1978, on  
Permissible Periods of Time  
for Which Justice Courts and  
Magistrate Courts May Impose  
Probation.

The new Criminal Code, effective October 1, 1978, will generally expand the criminal jurisdiction of justice and magistrate courts. Laws 1978, Ch. 201, § 335, amends A.R.S. § 22-301(4) to read in pertinent part:

The justice of the peace courts shall have jurisdiction of the following offenses committed within their respective precincts in which such courts are established, subject only to change of venue as provided by law:

\* \* \*

4. Misdemeanors and criminal offenses punishable by a fine not exceeding one thousand dollars, or imprisonment in the county jail not to exceed six months, or by both such fine and imprisonment.

(Emphasis added.)

As concerns natural persons, the following offenses will be within the jurisdiction of justice courts and magistrate courts:

(i) Class 1 Misdemeanors - up to 6 months in jail and/or \$1000 fine;

(ii) Class 2 Misdemeanors - up to 4 months in jail and/or \$750 fine;

(iii) Class 3 Misdemeanors - up to 30 days in jail and/or \$500 fine;

(iv) Petty Offenses - up to \$300 fine (no incarceration).

See new §§ 13-707 and 13-802.

Where the defendant is eligible for probation, new A.R.S. §§ 13-603 and 13-901<sup>6</sup> provide that he may be placed on probation in lieu of sentencing, with certain required conditions. See new A.R.S. §§ 13-603 (B), (C); 13-901 (A), (E), (F). New A.R.S. § 13-902(A) establishes the following periods of probation for misdemeanors:

A. Unless terminated sooner, probation may continue for the following periods:

\* \* \*

3. For a class 1 misdemeanor, three years.

4. For a class 2 misdemeanor, two years.

5. For a class 1 misdemeanor, one year.

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6. A.R.S. § 13-1657 (Supp. 1977) is repealed by Laws 1977, Ch. 142, § 36, effective October 1, 1978.

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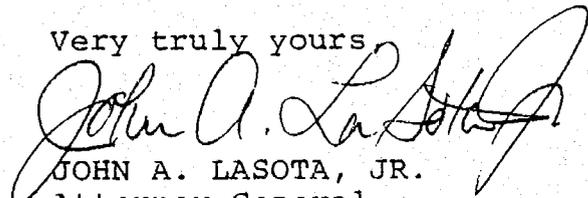
New A.R.S. § 13-902(C) provides:

Notwithstanding any other provision of law, justice courts and magistrate courts may impose the probation periods specified in subsection A, paragraphs 3, 4 and 5 of this section.<sup>7</sup>

Section 13-902(C) makes it clear that justice courts and magistrate courts have concurrent jurisdiction with the superior court to impose the new, augmented probation periods established by new A.R.S. § 13-902(A)(3)-(5).

The foregoing is an overview of the justice courts' and magistrate courts' powers over natural persons with respect to probation under the new Criminal Code, effective October 1, 1978. No attempt has been made to deal with the interpretational problems which may arise in the application of the Code in areas such as eligibility for probation, enforcement of restitution, extension of probationary terms under new A.R.S. § 13-902(B), open-ended offenses, and non-probation sentencing alternatives.

Very truly yours,



JOHN A. LASOTA, JR.  
Attorney General

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7. A person who is placed on probation may also be fined, and must be required to make restitution pursuant to new A.R.S. § 13-603(C) where a victim has suffered economic loss. New A.R.S. §§ 13-603(C); 13-901(A).