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September 15, 1988

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ARIZONA ATTORNEY GENERAL

INTERAGENCY

The Honorable Jim Skelly
Arizona State Representative
State Capitol, House Wing
Phoenix, Arizona 85007

Re: I83-105 (R83-106)

Dear Representative Skelly:

We are writing in response to your request for an opinion whether A.R.S. § 13-603 applies to minor traffic violations, which have recently been decriminalized. Effective July 27, 1983, the legislature amended A.R.S. § 13-603 to add the following language:

C. If a person is convicted of an offense, the court shall require the convicted person to make restitution to the victim of the crime or to the immediate family of the victim if the victim has died; in such an amount and manner as the court may order after consideration of the economic loss to the victim and economic circumstances of the convicted person.

Your first question is in what cases does this section apply. The Criminal Code defines "offense" as follows:

"Offense" means conduct for which a sentence to a term of imprisonment or of a fine is provided by any law of this state or by any law, regulation or ordinance of a political subdivision of this state.

A.R.S. § 13-105.18. The Criminal Code does not define the term "conviction." However, the Arizona Supreme Court has defined "conviction" as the entry of a judgment of conviction. State v. Lopez, 120 Ariz. 607, 609, 587 P.2d 1184, 1186 (1978). Therefore, § 13-603.C applies to anyone receiving a judgment of conviction for conduct for which he could receive the sentence of imprisonment or a fine.

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Your next question is whether this section applies to minor traffic violations, which have been decriminalized pursuant to Ch. 271, 1983 Ariz. Laws, 1st Reg. Sess., effective December 31, 1983. Inasmuch as violations of these laws provide for the imposition of civil sanctions,¹ these civil traffic violations are not "offenses" within the purview of A.R.S. § 13-105.18. Accordingly, the restitution provisions in A.R.S. § 13-603.C do not apply.

Your final question is whether a person who forfeits bond without admitting guilt has been "convicted" of an offense. Rule VII(b) of the Rules of Procedure in Traffic Cases allows the court to forfeit bail for a person who has posted bail but has failed to appear as scheduled. In such a case, the person has not admitted guilt and has not been proved guilty. The person therefore has not been convicted of anything, so the provisions on restitution would not apply.

Sincerely,



BOB CORBIN
Attorney General

BC:lm

1. See, e.g., A.R.S. §§ 28-1055.C, 28-1059.B, 28-1061.C, 44-2403.A.