

 KeyCite Yellow Flag - Negative Treatment  
Unconstitutional or Preempted Validity Called into Doubt by *U.S. v. Arizona*, 9th Cir.(Ariz.), Apr. 11, 2011

[Arizona Revised Statutes Annotated](#)

[Title 13. Criminal Code \(Refs & Annos\)](#)

[Chapter 7. Sentencing and Imprisonment \(Refs & Annos\)](#)

A.R.S. § 13-707

§ 13-707. Misdemeanors; sentencing

Effective: January 1, 2009

[Currentness](#)

**A.** A sentence of imprisonment for a misdemeanor shall be for a definite term to be served other than a place within custody of the state department of corrections. The court shall fix the term of imprisonment within the following maximum limitations:

1. For a class 1 misdemeanor, six months.
2. For a class 2 misdemeanor, four months.
3. For a class 3 misdemeanor, thirty days.

**B.** A person who is at least eighteen years of age or who has been tried as an adult and who stands convicted of any misdemeanor or petty offense, other than a traffic offense, and who has been convicted of one or more of the same misdemeanors or petty offenses within two years next preceding the date of the present offense shall be sentenced for the next higher class of offense than that for which the person currently is convicted. Time spent incarcerated within the two years next preceding the date of the offense for which a person is currently being sentenced shall not be included in the two years required to be free of convictions.

**C.** If a person is convicted of a misdemeanor offense and the offense requires enhanced punishment because it is a second or subsequent offense, the court shall determine the existence of the previous conviction. The court shall allow the allegation of a prior conviction to be made in the same manner as the allegation prescribed by § 28-1387, subsection A.

**D.** A person who has been convicted in any court outside the jurisdiction of this state of an offense that if committed in this state would be punishable as a misdemeanor or petty offense is subject to this section. A person who has been convicted as an

**§ 13-707. Misdemeanors; sentencing, AZ ST § 13-707**

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adult of an offense punishable as a misdemeanor or petty offense under the provisions of any prior code in this state is subject to this section.

**E.** The court may direct that a person who is sentenced pursuant to subsection A of this section shall not be released on any basis until the sentence imposed by the court has been served.

**Credits**

Added as § 13-903 by Laws 1977, Ch. 142, § 57, eff. Oct. 1, 1978. Renumbered as § 13-707 and amended by Laws 1978, Ch. 201, §§ 104, 107, eff. Oct. 1, 1978. Amended by Laws 1987, Ch. 114, § 1; [Laws 2008, Ch. 301, § 31, eff. Jan. 1, 2009](#).

A. R. S. § 13-707, AZ ST § 13-707

Current through legislation effective March 25, 2022 of the Second Regular Session of the Fifty-Fifth Legislature (2022).

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## Notes Of Decisions

### Concurrent sentences

Trial court's order that misdemeanor jail sentences were to run concurrently with defendant's term of imprisonment on felony charge was improper, however, Court of Appeals would not disturb sentence where State did not cross appeal and error ran in favor of defendant. [State v. Garcia \(App. Div.1 1990\) 165 Ariz. 547, 799 P.2d 888](#), review denied. [Criminal Law 1136](#); [Sentencing And Punishment 594](#)

Concurrent sentence on misdemeanor was unlawful. [State v. Harris \(App. Div.2 1982\) 134 Ariz. 287, 655 P.2d 1339](#). [Sentencing And Punishment 66](#)

### Flat time sentences

Municipal court sentences of \$408 fine and suspension of driver's license for 90 days for two civil violations and \$40 fine for violating restriction on driver's license requiring defendant to wear glasses were within prescribed legal limits; municipal court had no obligation to sentence defendant to driver's education classes. [State v. Harrison \(App. Div.1 1990\) 164 Ariz. 316, 792 P.2d 779](#), review denied, certiorari denied [111 S.Ct. 979, 498 U.S. 1093, 112 L.Ed.2d 1064](#). [Automobiles 144.5](#); [Automobiles 359.1](#)

"Flat" time sentences, which prisoner must serve without possibility of double time allowance for work done outside jail as trusty, are not permitted in misdemeanor cases unless specifically authorized by statute. [Application of Webb \(1986\) 150 Ariz. 293, 723 P.2d 642](#). [Prisons 245\(3\)](#)

### Enhanced sentences

Reclassifying second and third disorderly conduct convictions within two years as class 6 felonies and sentencing defendant as category three repetitive felony offender was not permitted by and was fundamental error under statute requiring sentence for the next higher class of offense if the person "stands convicted of any misdemeanor" and "has been convicted of one or more of the same misdemeanors" within two years preceding date of the present offense; phrase "stands convicted of any misdemeanor" dictated that the current conviction had to be classified as a class 1 misdemeanor in order for the trial court to impose a class 6 felony sentence. [State v. Gulley \(2017\) 242 Ariz. 149, 393 P.3d 929](#). [Criminal Law 1042.5](#); [Sentencing and Punishment 1238](#)

Disorderly conduct convictions, which were defendant's second and third such convictions in less than two years, were class 1 misdemeanors rather than felonies when calculating an enhanced sentence for a repetitive offender; a felony classification was inconsistent with the plain language of the misdemeanor sentencing statute and the overall context of the statutory scheme for enhanced sentencing for various offenses, and, furthermore, the state conceded that a felony classification was not correct. [State v. Caesar \(App. Div.1 2016\) 241 Ariz. 66, 383 P.3d 1140](#). [Sentencing and Punishment 1238](#)

To the extent the sentencing directives in the misdemeanor sentencing statute conflict regarding repetitive misdemeanor offenses, the specific statutory mandate for enhanced punishment controls over the generally applicable misdemeanor sentencing range. [State v. Caesar \(App. Div.1 2016\) 241 Ariz. 66, 383 P.3d 1140](#). [Sentencing and Punishment 34](#)

The language of the misdemeanor sentencing statute expressly controverts the notion that the enhanced sentencing range for repetitive misdemeanor offenses also converts the classification of the offense into a felony. [State v. Caesar \(App. Div.1 2016\) 241 Ariz. 66, 383 P.3d 1140](#). [Criminal Law 27](#)

Sufficient evidence existed to support jury's finding that defendant had been previously convicted of disorderly conduct, as required to enhance two counts of disorderly conduct per domestic violence to class 6 felonies; the jury had before it evidence showing that defendant was convicted of disorderly conduct within two years preceding the date that he committed the offenses for which he was being prosecuted. [State v. Gulley \(App. Div.1 2016\) 240 Ariz. 580, 382 P.3d 795](#) , review granted, vacated in part [242 Ariz. 149, 393 P.3d 929](#) . [Disorderly Conduct 148](#)

Defendant, who was convicted of class 1 misdemeanor, threatening or intimidating per domestic violence, was not only subject to class 6 felony sentencing, but his offense was a class 6 felony for purposes of sentencing him as a category three repetitive offender. [State v. Gulley \(App. Div.1 2016\) 240 Ariz. 580, 382 P.3d 795](#) , review granted, vacated in part [242 Ariz. 149, 393 P.3d 929](#) . [Sentencing and Punishment 1260](#)

### Term

Sentence begins on day court imposes sentence or on day defendant surrenders to custody, regardless of whether that "day" consists of full twenty-four hours. [State v. Carnegie \(App. Div.1 1993\) 174 Ariz. 452, 850 P.2d 690](#) . [Time 11](#)

Potential 195-day term of incarceration was not excessive sentence for class 6 undesignated offense of theft, even though sentence exceeded six-month maximum jail sentence for class 1 misdemeanors and trial court refrained from designating offense as felony or misdemeanor, given that statute on undesignated offenses required that offense be treated as felony for all purposes until court entered order designating offense as misdemeanor. [State v. Brown \(App. Div.1 1991\) 169 Ariz. 35, 816 P.2d 932](#) . [Larceny 88](#)

### Right to jury trial

Defendant is not entitled to a jury trial when he is charged with multiple petty offenses that give rise to the possibility of an aggregate prison term of more than six months; whether a defendant is exposed to aggregate sentence totaling more than six months for multiple petty offenses depends on the particularities of that case, and not on the underlying offense, and simply being convicted of misdemeanor assault, or even multiple counts of misdemeanor assault, does not automatically expose a defendant to a prison term longer than six months. [Spence v. Bacal \(App. Div.2 2018\) 243 Ariz. 504, 413 P.3d 1254](#) . [Jury 22\(.5\)](#)

Because misdemeanor assault was a petty offense for which no jury right attached, defendant, who was charged with three counts of assault, was not entitled to a jury trial on the basis that he faced a potential aggregate sentence of 18 months if court imposed consecutive sentences on all three counts; maximum sentence for each misdemeanor assault was six months, and court need not look to the punishment actually imposed, because court was able to discern the legislature's judgment of the character of the offense. [Spence v. Bacal \(App. Div.2 2018\) 243 Ariz. 504, 413 P.3d 1254](#) . [Jury 22\(2\)](#)

Assault charges against defendant were presumptively not jury-trial eligible because the maximum sentence for misdemeanor assault was six months, indicating that it was petty offense that fell outside the jury requirement of state and federal constitutional protections. [Spence v. Bacal \(App. Div.2 2018\) 243 Ariz. 504, 413 P.3d 1254](#) . [Jury 22\(2\)](#)

Misdemeanor offenses punishable by no more than six months' incarceration are presumed to be jury ineligible under the Arizona Constitution; a defendant may rebut this presumption, however, by demonstrating that the offense carries additional severe, direct, uniformly applied, statutory consequences that reflect the legislature's judgment that the offense is serious. [Phoenix City Prosecutor's Office v. Nyquist \(App. Div.1 2017\) 243 Ariz. 227, 404 P.3d 255](#) . [Jury 22\(.5\)](#)

Misdemeanor marijuana and drug paraphernalia possession are not jury-eligible offenses; neither was a crime at the time of statehood, maximum term of imprisonment for offenses is six months, so that crimes are presumed to be petty, rather than serious, and offenses carry no additional severe, direct, uniformly applied, statutory consequences that would work to overcome that presumption. [Stoudamire v. Simon \(App. Div.2 2006\) 213 Ariz. 296, 141 P.3d 776](#) , review denied. [Jury](#)

22(2)

Drag racing is not a jury-eligible offense; there is no common law antecedent for the statute prohibiting drag racing, offense is presumptively jury-ineligible, as it is a misdemeanor offense punishable by no more than six months incarceration, and there are insufficient severe, direct, uniformly applied, statutory consequences of violation of offense to overcome such presumption. [Derendal v. Griffith \(2005\) 209 Ariz. 416, 104 P.3d 147](#) . Jury 22(2)

**Validity (1)**

**Case Treatment (1)**

**Validity Called into Doubt by**



[U.S. v. Arizona](#)

641 F.3d 339, 342+ ( 9th Cir.(Ariz.) Apr. 11, 2011 ) , ( NO. 10-16645 )

**Versions (2)**

**§ 13-707. Misdemeanors; sentencing** 

**AZ ST § 13-707**

**Effective January 1, 2009**

Enacted Legislation [Laws 2008, Ch. 301, § 31, eff. Jan. 1, 2009](#)

**Prior Versions (1)**

**§ 13-707. Sentence of imprisonment for misdemeanor**

**AZ ST § 13-707**

**Effective [See Text Amendments] to December 31, 2008**

Enacted Legislation Renumbered as § 13-707 and amended by Laws 1978, Ch. 201, §§ 104, 107, eff. Oct. 1, 1978.

Amended by Laws 1987, Ch. 114, § 1

## Editor's and Revisor's Notes (1)

### HISTORICAL AND STATUTORY NOTES

The 1987 amendment designated subsec. A and added subsec. B.

The 2008 amendment by Ch. 301 rewrote the section, which had read:

“ **A.** A sentence of imprisonment for a misdemeanor shall be for a definite term to be served other than a place within custody of the state department of corrections. The court shall fix the term of imprisonment within the following maximum limitations:

“1. For a class 1 misdemeanor, six months.

“2. For a class 2 misdemeanor, four months.

“3. For a class 3 misdemeanor, thirty days.

“ **B.** The court may, pursuant to this section, direct that the person sentenced shall not be released on any basis until the sentence imposed by the court has been served.”

Laws 2008, Ch. 301, § 119 , provides:

“ **Sec. 119. Intent**

“By this act, the legislature intends to reorganize title 13, chapters 6 and 7, Arizona Revised Statutes , for the purpose of simplifying the criminal sentencing laws. This act is not intended to make any substantive changes to the criminal sentencing laws except for very limited adjustments to the sentence length for repetitive offenders to account for combining §§ 13-604 and 13-702.02, Arizona Revised Statutes , as repealed by this act.”

Laws 2008, Ch. 301, § 120 , provides:

“ **Sec. 120. Effective date**

“Except as provided by Laws 2003, chapter 255, § 8, as amended by this act, this act is effective from and after December 31, 2008.”

Former § 13-707, added by Laws 1961, Ch. 108, § 4, defining sedition, was repealed by Laws 1977, Ch. 142, § 23, effective October 1, 1978.

**Bill Drafts (3)**

**1. 2008 AZ H.B. 2207 (NS)**

2008 Arizona House Bill No. 2207, Arizona Forty-Eighth Legislature - Second Regular Session (FULL TEXT - NETSCAN), July 07, 2008, VERSION: Adopted, Amended,

**2. 2008 AZ H.B. 2207 (NS)**

2008 Arizona House Bill No. 2207, Arizona Forty-Eighth Legislature - Second Regular Session (FULL TEXT - NETSCAN), June 23, 2008, VERSION: Engrossed, Amended,

**3. 2008 AZ H.B. 2207 (NS)**

2008 Arizona House Bill No. 2207, Arizona Forty-Eighth Legislature - Second Regular Session (FULL TEXT - NETSCAN), Jan. 14, 2008, VERSION: Introduced, Amended,

Updating Legislation: **2008 Ariz. Legis. Serv. Ch. 301 (H.B. 2207) (WEST)**

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**Context and Analysis (5)**

**Law Review And Journal Commentaries (1)**

Adventures in risk: [Predicting violent and sexual recidivism in sentencing law](#). Melissa Hamilton, 47 *Ariz.St.L.J.* 1 (Spring 2015).

**ALR Library (1)**

[16 American Law Reports 3rd 1373](#), Right to Trial by Jury in Criminal Prosecution for Driving While Intoxicated or Similar Offense.

**Treatises and Practice Aids (1)**

[15 Employment Coordinator Workplace Safety § 4:107](#), Criminal Penalties.

**United States Supreme Court (2)**

Sentencing guidelines, appellate review, non-guidelines sentence, abuse of discretion standard, see [Gall v. U.S.](#), *U.S.lowa*2007, 128 S.Ct. 586, 552 U.S. 38, 169 L.Ed.2d 445.

Sentencing, violent felony repeat offenders, predicate offenses, civil rights restored exemption, misdemeanor battery convictions, see [Logan v. U.S.](#), 2007, 128 S.Ct. 475, 552 U.S. 23, 169 L.Ed.2d 432, habeas corpus dismissed 2015 WL 12857330, affirmed 644 Fed.Appx. 280, 2016 WL 1084260.