

RIGHT TO JURY TRIAL MATRIX

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Pima County Justice Court

Precinct 2

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Federal Constitutional law does not recognize a right to jury trial for petty crimes as opposed to serious offenses. To distinguish the two categories the focus is on objective criteria that indicate the seriousness with which society regards the offense. The most relevant factor is the severity of the maximum authorized penalty. See Codispoti v. Penn., 418 U.S. 506, 512 (1974); 47 Am. Jur. 2d, Jury § 51-52. Thus wherever there is exposure to over 6 months imprisonment the right to trial by jury may attach. Lewis v. U.S., 116 S. Ct. 2163; Baldwin v. New York, 399 U.S. 66 (1970). Even where the offense is sanctionable by less than 6 months jail, the crime is jury triable if it can be demonstrated that additional penalties coupled with the maximum incarceration period make the offense a serious crime. Blanton v. North Las Vegas, 489 U.S. 538 (1989). In this way the tests previously followed [(1) moral delinquency - Schick v. U.S. 195 US 65 (1904), (2) "malum in se" in nature - District Of Columbia v. Colts-, 282 US 63 (1930), (3) or triable by jury at common law - Callan v. Wilson-, 127 US 540 (1888)] were abandoned.

Historically, jury trials were granted in Arizona justice courts for any violation of a criminal statute. City of Phx v. Jones, 25 Ariz. App.98,541 P.2d 424, 428 f/n 3 (1975 Div. 1) citing State ex rel De Concini v. City Court, 9 Ariz. App.522,523,454 P.2d 192, 193(1969). Today, the test to determine whether the right to jury exists is a judicial doctrine, not a legislative mandate, and is subject to modification. St. v. Harrison, 164 Ariz. 316, 317, 792 P.2d 779, 780 (1990 Div. 1) Arizona law grants wider access to jury trials than the federal constitution. St. ex rel. McDougall v. Strohson, (Cantrell), 190 Ariz. 120, 945 P.2d 1251, 1252-53 (1997 En Banc) A denial of a judicially-recognized right to jury is misfeasance. Myers v. Reeb 190 Ariz. 341, 947 P.2d 915.

•**WHAT 3-Prong Test Applies?** per Rothweiler, 100 Ariz. 42, 410 P.2d 483 -

(1) **THE SEVERITY OF THE POSSIBLE PENALTY**

This is the most significant prong. St. ex rel. McDougall v. Strohson, (Cantrell), 190 Ariz. 120, 945 P.2d 1251, 1255 (1997 En Banc). To be severe, the penalty must be over 6 months jail or the fine might have to exceed \$5000 (though only under \$500 has been held not severe enough to be serious and \$1,000 was noted in dicta to be a serious crime). St. v. Harrison, 792 P.2d 779, 781. See also Rife v. Godbehere, 814 F. 2d 565 (9th Cir.) [Overruled on other grounds] This may require a jury in high restitution cases if the total potential punishment so determines. See St. v. Foy, 176 Ariz. 166, 169, 859 P.2d 792 (restitution viewed as a criminal penalty). See also Tibshraeny, 189 Ariz. 573, 944 P.2d 515.

(2) **THE 'MORAL QUALITY' OF THE ACT**, and ...

Acts of moral turpitude are those that adversely reflect on one's honesty, integrity or personal values. Dolny, infra, f/n 3 at 1196. This prong is subject to change with the transcourse of time. See 687 P.2d at 371 and 445 P.2d at 844. In Dolny, 161 Ariz. 293, 778 P. 2d 1193, 1197 the "moral quality" prong was broadened to include not only moral turpitude but also "grave consequences" resulting from conviction such as ability to earn a living or secure a professional license. Moral turpitude cases include the ones cited in Raye v. Jones 76 P.3d 863 • solicitation of prostitution, In re Koch, 181 Ariz. 352, 890 P.2d 1137 (1995); • perjury / forgery, Harris v. St., 41 Ariz. 311, 17 P.2d 1098 (1933) • Fraud, In re Wines 135 Ariz. 203, 660 P. 2d 454 (1983).

(3) **THE RELATIONSHIP OF THE OFFENSE TO COMMON LAW CRIMES**

The common law consists of the principles or judgments and decrees of Courts, the usage and rules of custom of antiquity, usually of English law prior to the American Revolution. At common law, juries heard offenses such as: larceny (121 Az 176), conspiracy (127 US at 556), disturbance of the peace (driving a carriage "in such a way as to endanger the lives of passers-by") Frances Wharton, 1 American Criminal Law § 4(1) (6th ed. 1870), indecent exposure (Truet v. State 57 So.512) ["her legs and private parts"]; State v. Walter, 2 Marv. 444, 43A. 253 (Del. Gen. Sess. 1895). and public nuisance (Colts, 282 US at 73..); See also U.S. v Hart, 1 Pet. C.C. 390, 92 (1817); Dist. of Columbia v. Clawans, 300 U.S. 617, 57 S. Ct. 660; Town of Montclair v. Stanoyevich, 79 A. 2d 288 (1951); St. v. Maier, 99 A 2d 21; Brown v. Greer, 16 Ariz. 215, 141 P.841 (1914) [if an individual is accused of an offense linked to jury trial at common law the accused is guaranteed a jury trial]; 15A Am Jur 2d Common Law; Felix Frankfurter & Thomas G. Corcoran, Petty Federal Offenses and the Constitutional Guaranty of Trial by Jury, 39 Harv. L. Rev. 917 (1926) and Petty Offenders Have No Peers! 26 U. Chi. L. Rev. 245 (1959). See also ARS 22-425.

Meeting one prong alone may lead to a jury trial. Harrison 792 P.2d at 781. **THE DEFENDANT MUST BE ADVISED OF HER RIGHT TO A JURY TRIAL AT ARRAIGNMENT.** R.14.3 (f) R.Cr.Pr. and R. VIII R. Proc. in Traffic cases.

•**WHEN IS A TIMELY JURY TRIAL DEMAND?**

Five days prior to trial. A.R.S. § 22-320, principally applies to criminal cases. Harrison, supra at 782. Ten days after a motion to set is filed. R.38 (B) R. civ. Pr. But Civil cases should also look at ARS § 22-220 which recognizes a demand of jury at "anytime before trial..." The placement of these statutes plus their wording within Title 22 gives some degree of guidance as to whether they have civil or criminal application. But See the annotations to these statutes./ Three days for City of Tucson offenses. T.C.C. 8-10./ Landlord-Tenant: Landlord - upon issuance of summons. Tenant - when appearing in court. A.R.S. 12-1176 (B)

•**WHAT IS THE STANDARD OF REVIEW?** The standard of review is de novo as jury eligibility is a matter of law. Amancio v. Foster, 196 Ariz. 95, 993 P.2d 1059 (App. 1999). It may be structural error to deprive or deny a Defendant of their right to a jury trial. St. v. Ring, 76 P.3d 421 [J. Feldman, dissenting]. The appropriate means to determine whether there is a right to a jury trial is by special action review. Campbell v. Superior Court, 186 Ariz. 526, 527, 924 P.2d 1045, 1046 (App. 1996).

•**WHERE CAN I GET MORE INFORMATION?**

A. FEDERAL: U.S. Const. Art. III, § 2, cl. 3; U.S. Const. amend. VI, Blanton v. City of North Las Vegas 487 U.S. 538. 541 (1989), Duncan v. Louisiana, 391 U.S. 145 (1968) [The right to trial by jury is "fundamental to the American scheme of justice."], 3 Madison Papers 144; 1 Elliot's Deb., 2d ed., 229; Magna Charta of King John, art. 46; 9 Hen. 3, c.29.

B. STATE: Ariz. Const. art. II, §§ 23 and 24, art 6 § 17, Ariz. R. Crim. P. 18.1(b), A.R.S. § 13-3983, A.R.S. § 22-320, ARS § 22-425 and ARS 21-102. See also ARS § 14-1306

"The right to a jury trial should be jealously guarded and preserved by the courts..."

Rothweiler, supra, at 47.

REQUIRE JURY (Criminal)

OFFENSE	ENUMERATION CLASS T.C.C.=TUCSON CITY CODE MISD.	CRIME'S RELATIONSHIP TO COMMON LAW See also ARS 22-425	MORAL QUALITY OF CRIME	SEVERITY OF POSSIBLE PENALTY	STATUTE/RULE	COMMENTS: ADVISE OF RIGHT AT ARRAIGNMENT R.14.3 (f) R.Cr.Pr., R.VIII R.Proc. In Traffic / Boating Cases
BOATING WHILE INTOXICATED	A.R.S. 5-395 1				A.R.S. 5-395 (M)	
BOTTOMLESS DANCING	T.C.C. 11-25.3 1	Related to indecent exposure	X			<u>City Court of City of Tucson v. Lee</u> , 16 Ariz. App. 449, 494 P.2d 54(1972)
CONSPIRACY	ARS 13-1003	X				<u>Callan v. Wilson</u> 127 U.S. 540, 556 (1887)
D.U.I./BAC	ARS 28-1381 (A1) (A2) (A3) 1 formerly ARS 28- 692 (A1) (A2) (A3)			X see also ARS 25-403(C) (CHILD CUSTODY) See also A.R.S. 26-1111 (Az. N'tl Guard)	28-1381 (f) formerly ARS § 28-692 (M)	<u>Rothweiler v. Superior Court</u> , 100 Ariz. 37,410 P.2d 479 (1966)But See <u>Davis v. Brisbois</u> , 28 Ariz. 312, 236 P. 715 (1925). Failure to follow <u>Rothweiler</u> is misfeasance. <u>Myers v. Reeb</u> , 190 Ariz. 341, 947 P.2d 915 (1997).
D.U.I. (EXTREME)	ARS 28-1382 (A) 1			X	28-1382 (c)	
ESSENTIAL OFFENSE ELEMENT	Felony context.					<u>St. v. Virgo</u> , 190 Ariz. 343, 947 P. 2d 917, 927 (Div. 1, 1997). A stipulation of an offense element still needs to be decided by the jury.
FALSE REPORTING TO LAW ENFORCEMENT	ARS 13-2907.01 1	X	X			<u>Mungarro v. Riley</u> , 170 Ariz. 589, 86 P.2d 1215 (App. 1991)
GAMBLING GAME, CONDUCTING A (POKER)	City of Douglas (ordinance # unknown)	Related to public nuisance				<u>Bowden v. Nugent</u> , 26 Ariz. 485, 226 Pac. 549 (1924); 2 <u>Russell, Law of Crime</u> , 1897, 24 Cyc. 102
HERDING SHEEP/GOATS ON LAND OR WATER OF ANOTHER	ARS 3-1298 formerly section 639, penal code 1913. 2	plus public policy -related to larceny- X				<u>State v. Shearer</u> 27 Ariz. 311, 232 P.893(1925). Defendant waived right to jury. Note statutory language change.
INDIRECT CRIMINAL CONTEMPT	ARS 12-863 (B) 2			If fine exceeds \$300 or over 6 months jail.	R.33.4 (a) R.CR.PROC. SEE Also ARS 12- 862 and 12- 863 (A)	See Also <u>Bloom v. Illinois</u> 88 S.CT. 1477 (1968) Unclear if applicable to limited jurisd. Courts: See <u>Soto</u> <u>v. Sotomayor</u> , 20 Ariz. App. 489, 514 P.2d 242, 243
JUVENILE						
TERMINATION OF PARENTAL RIGHTS	A.R.S. 8-223 (a hearing to terminate parental rights is tried to a jury) Note - Ariz. R. P. Juv. Ct. 66 (D)(2) cannot be read in such a way to eviscerate the statutory right to a jury trial by finding a waiver where a person will not be transported by prison authorities. <u>John C. v. Sargeant</u> (Ariz. Dept. Of Economic Security), 426 Ariz. Adv. Rep. 35 (Div. 1, 2004)					

**-Continued-
REQUIRE JURY (CRIMINAL)**

OFFENSE	ENUMERATION	CLASS MISD.	CRIME'S RELATIONSHIP TO COMMON LAW <u>See also ARS 22-425</u>	MORAL QUALITY OF CRIME	SEVERITY OF POSSIBLE PENALTY	STATUTE/RULE	COMMENTS: ADVISE OF RIGHT AT ARRAIGNMENT R.14.3 (f) R.Cr.Pr., R.VIII R.Proc. In Traffic / Boating Cases
JURISDICTION, <u>CONTESTED</u>							<u>St. v. Willoughby</u> , 181 Ariz. 530, 892 P.2d 1319. The standard is beyond a reasonable doubt before the jury. If jurisdictional facts are undisputed the court may decide the issue. <u>Id.</u>
LEAVING SCENE OF ACCIDENT	ARS 28-662	3		X adverse reflection on honesty and integrity			<u>Frederickson v. Superior Court of Maricopa County</u> , 187 Ariz. 273, 928 P.2d 697 (App. 1996) relied upon <u>St. v. Horton</u> , 248 S.E. 2d 263 & <u>People v. Bautista</u> 265 Cal. Rptr. 661,665. [<u>State v. Tibshraeny</u> , 189 Ariz. 573, 574, 994 P.2d 515, 516 (1997)]
MARIJUANA, UNLAWFUL POSS. OF	ARS § 13-3405(B)(1)	1		"grave consequences"			<u>St. ex rel Dean v. Dolny</u> , 161 Ariz. 297, 778 P.2d 1193 (1989)
RECKLESS DRIVING Note: There is a conflict in the 2 Appellate Divisions	ARS §§ 28-693	2	X				The court acknowledged the <u>Aldrich</u> , 141 Ariz. at 363 but states that the <u>Benitez</u> case [198 Ariz. at 93] now made the holding incorrect. Relied on <u>U.S. v. Colts</u> 282 U.S. 63, 72 (1930); <u>Hawaii v. O'brien</u> , 704 P.2d 883, 886 <u>Urs v. Maricopa</u> 201 Ariz. 71, 31 P.3d 845 (2001 Div. 1)
REDUCTION OF FELONY TO MISDEMEANOR					X		<u>St v. Frey</u> 141 Ariz. 321, 686 P.2d 1291 The natural question is, if the State felony waives is this a deprivation of a right to jury? The answer is no. <u>Amancio v. Forster</u> , 196 Ariz. 95, 993 P.2d 1059 (Div. 1 1999) <u>See also St. v. Quintana</u> , 195 Ariz. 325, 987 p.2d 811 (Div. 1, 1999)
SHOPLIFTING	ARS § 13-1805	1	Related to larceny	X	X		<u>St. v. Pima County Superior Court</u> , 121 Ariz. 174, 589 P.2d 48 (App 1978)
TRIAL DE NOVO	The charge on appeal was D.U.I.					ARS 22-371/22-374	<u>St. v. Flournoy</u> 193 Ariz. 150, 971 P.2d 197 (Ct. App. 1998) (even if waived in the lower court previously) [The trial was not recorded]

FELONY

AGGRAVATING CIRCUMSTANCES IN CAPITAL SENTENCING EXISTENCE OF	A.R.S. § 13-703						<u>Ring v. Arizona</u> [known as <u>Ring II</u>], 536 U.S. 584, 122 S. Ct. 2428, 153 L. Ed. 2d 556 (2002)
ESSENTIAL OFFENSE ELEMENT	Felony context.						<u>St. v. Virgo</u> , 190 Ariz. 343, 947 P. 2d 917, 927 (Div. 1, 1997). A stipulation of an offense element still needs to be decided by the jury.

RELEASE STATUS AS ENHANCEMENT	Formerly A.R.S. § 13-604.01A (13-604.02A) (held unconstitutional as to determination of release status by the trial court).						<u>St. v. Gross</u> , 201 Ariz. 41, 31 P.3d 815 (Div. 1, 2001), relying on <u>Apprendi v. New Jersey</u> , 530 U.S. 466 (2000) and <u>Jones</u> , 526 U.S. at 230, 252. Any fact other than a prior conviction that increases the maximum statutory penalty to which a Defendant is exposed must be found by a jury beyond a reasonable doubt. Found ARS 13-604 (P) unconstitutional as it only allowed a bench trial.
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COUNSEL: •THE DEFENDANT HAS NO RIGHT TO COUNSEL AS IT DOES NOT EQUATE TO A RIGHT TO JURY. Campa v. Fleming 134 Ariz. 330, 656 P.2d 619, 621 (Div. 2. 1982).

PEREMPTORY CHALLENGES: •THE NUMBER OF LIMITED JURISDICTION PEREMPTORY STRIKES, IN A CRIMINAL CASE, IS EITHER 2 (Per 18.4 c (1) (iii) R. Cr. Pr. Or 6 [See A.R.S. 22-321A.]

WAIVER: •THE DEFENDANT CAN WAIVE HER RIGHT TO A JURY. R.18.1 (b) R. Crim. Proc, ARS 13-3983 and ARS §13-607 (C)(6). See Form XX Rules of Crim. Proc. The waiver need not be written or recorded. St. v. Quintana, 195 Ariz. 325, 987 P.2d 811 (Div. 1 1999). A person does not waive the right to jury if he is incarcerated and state or federal authorities holding him refuse to transport him. John C. v. Sargeant (Ariz. Dept. Of Economic Security), 426 Ariz. Adv. Rep. 35 (Div. 1 2004).

•THE WAIVER MUST BE KNOWING AND VOLUNTARY. St. v. Wilson, 174 Ariz. 564, 851 P.2d 863, 866 (1993) citing People v. Rodriguez, 480 N.W. 2d 287, 291 (1992).

•THE DEFENDANT MUST BE COMPETENT TO WAIVE. St. v. Berger, 171 Ariz. 117, 828 P.2d 1258, 1262. [The Defendant must be questioned on the issue of voluntariness and further competency hearings to waive are unnecessary.]

•THE PARTIES MAY WAIVE THE REQUIRED NUMBER OF JURORS. U.S. v. Jackson, 390 U.S. 570, 88 S.Ct. 1209, St. v. Bushnell, Ariz. 590 P.2d. 466 (Div. 2, 1978)

•THE GOVERNMENT MUST CONSENT TO THE WAIVER. St. v. Durham, 111 Ariz. 19, 523 P.2d 47 (en Banc 1974) Citing Patton v. U.S., 281 U.S. 276, 50 S.Ct. 253 (1930). See also A.R.S. § 13-3983.

•THE STATE MAY EXERCISE LESS THAN ITS ALLOTTED PEREMPTORY CHALLENGES if it does not deny or impair the Defense's rights. St. v. Eisenlord, 137 Ariz. 385, 670 P.2d 1209 (Div. 1, 1983).

NOT JURY TRIABLE (Criminal, Municipal Civil and Traffic)

OFFENSE	ENUMERATION (T.C.C.=Tucson City Code) CLASS MISD.	COMMENTS
Adver./lic. contractor	A.R.S. § 32-1165 2	<u>State v. Miller</u> 172 Ariz. 294, 836 P.2d 1004 (1992 Div. 2) No Moral turpitude, no common law relationship.
Assault, simple	Renumbered to: ARS § 13-1203 formerly ARS 13-2411 (B) 1/2/3	<u>Goldman v. Kautz</u> 111 Ariz. 431, 531 P 2d 1138 (1975) Moral turpitude not found, <u>Bruce v. State</u> , 126 Ariz. 271, 614 P.2d 813 (1970) See Immig.Cons.
Carrying a concealed weapon	ARS 13-3102 formerly ARS - 13-911 1	<u>City of Phx v. Jones</u> , 25 Ariz App. 265, 542 P.2d 1145(1975) No moral turpitude. But See immigration consequences
Child Abuse	ARS 13-3623 (c), 13-105 (9) (d) 1	The only argument presented was that this charge was one of moral turpitude with grave consequence. <u>Bazzanella v. Tucson City Court</u> , 195 Ariz. 372,988 P.2d 157 (App. 1999). No moral turpitude. <u>Dolny</u> requires only secondary emphasis to the "stigma" and "moral quality" factors. No grave consequences.
Civil infractions, municipal		<u>Kennedy v. City of Tucson</u> , 60 P.3d 23C (2002)[Placing debris on public property, expanding a non-conforming use and expanding an existing site w/o a compliance certificate - relied, in part, on ARS §9-500.21]
Contractor w/o a license	A.R.S. § 32-1151 (See A.R.S. § 32-1164) 1	<u>St. v. Miller</u> , 172 Ariz. 294, 836 P.2d 1004 (1992 Div. 2) Humiliation and damage to reputation does not involve moral character and not common law triable. <u>St. v. Sup. Ct. (Tibshraeny)</u> 189 Ariz. 573, 944 P.2d 515 (1997). A fine of \$2500 coupled with a maximum 6 months jail is not a severe penalty.
Cruelty to Animals	ARS § 13-2910 (A) (1) 2	<u>Campbell v. Superior Court</u> , 186 Ariz. 526 *924 P.2d 1045 (1996) (No moral turpitude - <u>See</u> dissent)
Depositing Offens. Material	T.C.C. § 11-58 3	<u>Kennedy v. City of Tucson</u> , 60 P.3d 236 (2002 Div. 2)
Direct Crim. Contempt	ARS § 12-864 N/A	<u>Weiss v. Superior Court</u> , 106 Ariz. 577, 480 P.2d 3 (1971) [unless exceeding 6 months- <u>Cheff v. Schnackenberg</u> 384 U.S. 373 (1966).]
Disorderly Conduct	A.R.S. § 32-1151 now ARS § 13-2904 1	<u>St. ex rel. Baumert</u> , 127 Ariz. 152, 618 P.2d 1078 (1980)
Domestic Violence	A.R.S. § 13-3601 1/2/3	<u>St. ex rel. McDougall v. Strohson (Cantrell)</u> , 190 Ariz. 120, 945 P.2d 1251 (1997 En Banc). A Court must look at grave consequences flowing directly from the law of Arizona.
Drag Racing	A.R.S. § 28-708A 1	<u>Derendal v. Griffith</u> (Phoenix City Prosecutor's Office), 418 Ariz. Adv. Rep. 51
Drunk & disorderly conduct	formerly ARS § 13-379	<u>St. v. Cousins</u> , 97 Ariz. 105, 397 P.2d 217, 218 (not triable at common law, insufficient severity) and <u>O'Neill v. Mangum</u> , 103 Ariz. 484, 485, 445 P.2d 843, 844 (1968) (no moral turpitude).
DUI, Baby	ARS § 4-244(33) 1 Per A.R.S. § 4-246B	<u>Raye v. Jones</u> , 409 Ariz. Adv. Rep 20 (because impairment need not be proved there is no moral turpitude - in addition the <u>Rothweiler</u> principles on license suspension have been clarified by <u>Benitez</u> 198 Ariz. 93-94.)
Engaging in Business w/o Records exam.	formerly ARS § 42-1332 2	<u>State v. Stewart</u> , 21 Ariz. App. 123, 516 P.2d 332 (1973)
Forfeiture, bail bond	formerly ARS § 44-451	<u>U.S. Fidelity & Guaranty Co. v. State</u> , 65 Ariz. 212, 177 P.2d 823, 826 (1947) not jury triable at common law.

Injuring Public Property	T.C.C. § 11-49 1		<u>Kennedy v. City of Tucson</u> , 60 P.3d 236 (2002 Div. 2)
Juvenile Proceeding	<u>Pollard</u> , cites 8-207(A) & 8-323	All or felony	<u>McKeiver v. Pennsylvania</u> , 403 U.S. 528, 91 S.Ct. 1976 (1971) & <u>David G. v. Pollard (State of Arizona)</u> , 422 Ariz Adv. Rep. 55
Multiple Charges	<p><small>Lewis v. U.S. 116 S. Ct. 2163. No 6th Amend. right to Jury Trial in a single proceeding for multiple petty offenses where the aggregate potential penalty exceeds 6 months. Note: trial judge had promised less than 6 months jail. This is a major departure from precedent (See concurrence & dissent). The Court also noted that at common law multiple petty offenses were not jury triable. See <u>Queen v. Mathews</u>, 10 Mod. 26, 88 Eng. Rep. 609 (W.B. 1712); <u>King v. Swallow</u>, 8 T.R. 285, 101 Eng. Rep. 1392 (K.B. 1799) Overrules <u>Rife v. Godbehere</u>, (See comments). IF THE JURY DEMAND IS GROUNDED ON THE FEDERAL CONSTITUTION THE MOTION <u>MUST</u> BE DENIED.</small></p>		This was jury triable only if sentence exceeded 6 months, and where charges arose out of same act. <u>Bruce v. State</u> , 126 Ariz. 271, 614 P.2d 813. (Div. 2 1980). Also <u>Rife v. Godbehere</u> , 814 F.2d 565 (9th Cir. 1987) (reduction of aggregate punishment exceeding 1 yr to 180 days after remand. Violation remedied by reduction.) OVERRULED See also <u>St. v. Moreno</u> 134 Ariz. 199, 655 P.2d 23 [Which was overruled by <u>Dolny</u> , 161 Ariz. 297]
Nuisance, Public	T.C.C. § 11-47	1	<u>Kennedy v. City of Tucson</u> , 60 P.3d 236 (2002 Div. 2) [Also, <u>People v. 1941 Chevy</u> , 37 Cal.2d 283, 231 P.2d 832 (Cal. 19510, and <u>Weiss v. St. Ex Rel. Cardine</u> , 455 p.2D 904 (wYO. 1969); <u>But See U.S. v. Colts</u> 282 U.S. 63, 73 (1930).
Priors	ARS § 13-604.03	N/A	<u>But see St. v. Gilbert</u> , 119 Ariz. 384, 581 P.2d 229, 230 (In Banc, 1978)
Reckless Driving * But see Jury Triable - Appellate Conflict.	ARS § 28-693	2	<u>St. ex.rel Dean v. City Court</u> (Aldrich) 141 Ariz.361,363,687 P.2d 369, 371 (1984) <u>But See Dist. of Colum. v. Colts</u> 282 U.S. 63, 73 (1930). <u>But See</u> A.R.S. 26-1111 (Az. N'tl Guard) But see <u>URS v. Maricopa</u> , 201 Ariz. 71, 31 P.3d 845 (2001 Div. 1)
Resisting Arrest	ARS § 13-2508 (If waived down)	1	<u>Spronken v. City Court</u> , 130 Ariz. 62, 633 P.2d 1055
Restr. on lic/ Traffic Violations, Various	ARS § 28-424 Also <u>See</u> ARS 22-220	2 Civil Traffic	<u>St v. Harrison</u> , 164 Ariz.316, 792 P.2d 779 (1990) 90 day susp license \$408 fine, 4 months maximum jail exposure. <u>See</u> also <u>St. v. Richey</u> , 762 P.2d 585, 158 Ariz 298 (1988) <u>See</u> also <u>St. ex rel De Concini</u> , 9 Ariz. App. 522, 454 P.2d 192 (1969) [involving A.R.S. 28-701 and 28-855 No grave consequences found]. <u>See</u> also A.R.S. 28-1596 (D) & <u>Gilberg v. Barbieri</u> , 53 N.Y. 2d 285, 441 N.Y.S. 2d 49, 51-53, 423 N.E. 2d 807, 809-10 (1981).
Squatting on City Property	T.C.C. § 11-12	1	<u>Kennedy v. City of Tucson</u> , 204 Ariz. 96, 60 P.3d 236 (2002 Div. 2)
Sale Alcohol. bev. to minors	ARS § 4-244 (9) [<u>See</u> A.R.S. § 4-246(B)]	2	<u>Spitz v. Municipal Court</u> , 127 Ariz. 405, 621 P.2d 911 (1980). (Severity of penalty lacking, no moral turpitude) . <u>Spitz</u> appears to overrule <u>Tsipai v. State</u> , 8 Ariz. App.3, 442 P.2d 167 though <u>Tsipai</u> was not mentioned. <u>Tsipai</u> rested exclusively on the interpretation of ARS 22-320.
Suspended Drivers License (for DUI)	ARS § 28-3473 (B) formerly 28-473 (B)	1	<u>Benítez v. Dunevant</u> , 198 Ariz. 90, 7 P.3d 99 (2000) <u>See</u> the dissent for the argument of why the federal test should be adopted.
Trespass, criminal	A.R.S. § 13-1504		<u>St. v. Quintana</u> , 195 Ariz. 325, 987 P.2d 811 (App. 1999) No moral turpitude (f/n #1) [<u>St v. Thorne</u> , 193 Ariz 137, 971 P.2d 184 allows the state to amend the complaint from a felony to a misdemeanor.], <u>See</u> also <u>Kennedy v. City of Tucson</u> , 204 Ariz. 96, 60 P.3d 236 (2002) [relied on A.R.S. 22-425 (A), in part.]

JURY TRIABLE (CIVIL)

THE CIVIL RIGHT TO JURY

It does not hold true that every civil action is triable by a jury. Only those civil actions triable by a jury at common law in 1910 (adoption of Arizona Constitution) are jury triable unless a statute specifically confers the right to a jury. Life Inv. Ins. Co. v. Horizon, 182 Az. 529, 898 P.2d 478, 481 (Div. 1 1995). See Donohue v. Babbitt, 26 Ariz. 542, 550, 227 P. 995, 997 (1924) Where the relevant statute uses the term "court" that equates to a bench trial. Campbell v. Sup. Ct. 12 Ariz. App. 398, 399-400, 470 P.2d 718, 719-20 (1970).

***Timeliness:** A.R.S. 22-220 allows a trial demand in Justice court "at any time before trial". In other cases it must be in writing prior to trial setting or w/in 10 days after a motion to set is filed. R 38 (B) R. Civ. P.

CIVIL ACTION	COMMON LAW See also A.R.S. § 1-201	STATUTE / RULE See also A.R.S. § 14-1306 and Rule 39 (j)	COMMENTS
Amended pleading			So long as the amended complaint is one in which a jury may be had. <u>Apache Playtime</u> , 27 Ariz. App. 178,, 552 P.2d 767
Condemnation		Art. 2 § 17 Ariz. Const. A.R.S. § 12-1116	<u>Desert Waters, Inc. v. Sup. Ct.</u> 91 Ariz. 18, 370 P.2d 652 (1962)
Conservatorship		A.R.S. § 14-5401.01 (G)	
Contempt		A.R.S. § 12-863 (A)	
Contract, breach of			<u>Tanner v. Superior Court</u> , 123 Ariz 599, 601 P.2d 599 citing <u>Amer. Surety Co. v. Blake</u> , 27 P.2d 972 (1933); <u>Snell v. Niagara Paper Mills</u> , 86 N.E. 460 (1908).
Declaratory Judgment		R.57 R. Civ. Proc.	
Eminent Domain		A.R.S. §12-1146	Written notice is required prior to the date of the hearing. A.R.S. 12-1145 & 12-1147(D)
Equity [See 14-1306 (b) Advisory Jury]			In Superior Court, a trial may be demanded as a matter of right whether the case falls in equity or in law. See <u>Shaffer v. Ins. Co. Of North Am.</u> , 113 Ariz. 21, 22, 545 P.2d 945, 946 (1976). The verdict in equity cases is merely advisory. <u>Graham v. Shooke</u> , 107 Ariz. 79, 482 P.2d 446 (1971). See <u>Mozes v. Daru</u> . 4 Ariz. App. 385, 420 P.2d 957 (Ct. App. 1966).
Guardianship		A.R.S. §14-5303 (c)	A.R.S. § 14-5310 (G)
Intentional Torts	X		<u>Franks v. U.S. Fid. & Guar. Co.</u> , 149 Ariz. 291, 718 P.2d 193 Citing <u>Apache Playtime, Inc. v. Universal Playtime, Inc.</u> 27 Ariz. App. 178, 552 P.2d 767 (1976)
Landlord/Tenant		A.R.S. §12-1176	May be demanded when the tenant initially appears in court.
Libel	X		<u>Yetman v. English</u> , 168 Ariz. 71, 73 and 77-78, 811 P.2d 323 (En Banc 1991)
Negligence		A.R.S. § 12-2506	<u>Morgan v. Hays</u> , 102 Ariz. 150, 426 P.2d 647 (1967) <u>Alabam's Freight Co. v. Hunt</u> , 29 Ariz. 419, 242 P.2d 658 (1926) See also <u>Law v. Superior Court</u> , 157 Ariz. 147, 755 P.2d 1135 (1988). & 47 Am. Jur. 2d 757.
Probate		A.R.S. §14-1306	
Public Entity, Action against a		A.R.S. §12-821	<u>Tanner Cos. v. Sup. Ct.</u> , 123 Ariz. 599, 601 P.2d 599 (en Banc 1979)
Sexually Violent Person		A.R.S. § 36-3706	
Uniform Contribution Among Tortfeasors Act (UCATA)		A.R.S. § 12-2501 - 12-2509	<u>City of Tucson v. Sup. Ct.</u> , 161 Ariz. 441, 445, 778 P.2d 1337 (Div. 2 1989) See footnote 5 in 165 Ariz. 236, 798 P.2d 374 (1990 En Banc)
Will contest.		A.R.S. § 14-1306 formerly A.R.S. 38-210	<u>La Bonne v. First National Bank of Arizona</u> , 75 Ariz. 184, 254 P.2d 435, 438 (1953).

FEES: •A.R.S. § 22-281 (A) (1), § 12-341 and § 21-122

INSTRUCTING JURY: •A.R.S. § 22-211

NUMBER OF JURORS NEEDED FOR A CIVIL VERDICT: •6/8 must agree in a court of record. A.R.S. § 21-102 (C); 5/6 in a court not of record. A.R.S. § 21-102 (D)

PEREMPTORY CHALLENGES:•4 under R. 47 (e) R. Civ. Proc. Or 3 under A.R.S. § 22-223B.

WAIVER: •A.R.S. § 21-102 (E). The Court of Appeals noted in dictum that where a jury trial demand is on file, but is not brought to the attention of the court, any proceeding without objection may be a waiver. 4 Ariz. App. 385, 391 420 P.2d 957 citing Johnson v. Neal, 229 P.2d 939 (1951) and Hernández v. Light Pub. Co., 245 S.W. 2d 553 (1952). Disregard for court procedure (failure to attend arbitration hearing and failure to cooperate in discovery) may be deemed a waiver. Graf v. Whitaker, 192 Ariz. 403, 966 P.2d 1007 (Div. 1 1998).

NOT JURY TRIABLE

ADMINISTRATIVE

Board of Optometry disciplinary hearing	A.R.S. 32-1749 (E)	Judicial review of a disciplinary hearing.
Mobile Home Parks hearing	A.R.S. 33-1401 et seq	<u>Cactus Wren v. Dept. of Bldg. & Fire Safety</u> , 177 Ariz. 559,869 P.2d 1212, 1217 (Div. 1, 1993)
Suspension of driver's license	A.R.S. 28-691	<u>Geer v. Ordway</u> , 156 Ariz. 588, 589, 754 P.2d 315 (Div. 2 1987).

CIVIL

CIVIL ACTION	STATUTE	COMMENTS
Civil Rights Act, Arizona (ACRA)	A.R.S. §41-1461(4) and ARS 41-1481(B)	<u>Burris v. City of Phx.</u> 179 Ariz. 35, 875 P. 2d 1340 (Div. 1, 1993)
Deficiency Action	A.R.S. § 33-814	<u>Life Inv. Ins. Co. v. Horizon Resources</u> , 182 Ariz. 529, 898 P.2d 478 (Div. 1. 1995). The trial is to the court with an advisory jury.
Employee Retirement Income Security Act of 1974 (ERISA 29 U.S.C.S. §§ 1001 et seq.)	ERISA §1132	<u>Elgin v. Great-West Life Assurance Co.</u> , 163 Ariz. 176, 181, 786 P.2d 1027 (Ct. App. 1989).
Foreclosure	A.R.S. § 33-814	<u>Greer v. Goesling</u> , 54 Ariz. 488 1492 97 P.2d 218, 222 (1939) <u>See also Life Inv.</u> , 182 Ariz. 529.
Forfeiture, bail bond	Formerly A.R.S. § 44-451	<u>U.S. Fidelity & Guaranty Co. v. State</u> , 65 Ariz. 212, 177 P.2d 823, 826 (1947). Not jury triable at common law.
Garnishment	A.R.S. § 12-1598 - 10 (H) Rule 64 R. Civ. Proc.	<u>Parking Concepts, Inc. v. Sheldon</u> 193 Ariz. 432, 973 P.2d 1189 (App. 1998)
Insurance Contract, interpretation		<u>Thomas v. Liberty Mutual Insurance Company</u> , 173 Ariz. 322, 324, 842 P.2d 1335, 1337 (App. 1992).
Paternity	A.R.S. § 12-846 (f)	<u>Hoyle v. Sup. Ct.</u> , 161 Ariz. 224, 228, 778 P.2d 259 (Div. 1 1989).
Summary Judgment		<u>Alaface v. National</u> , 181 Ariz. 586, 599, 892 P.2d 1375 (Div. 1, 1994). <u>K.B. v. State Farm</u> , 189 Ariz. 263, 268, 941 P.2d 1288 (Div. 1, 1997).

FELONY

Threshold amount as a sentencing factor, finding of narcotic drug	A.R.S. §13-3408 (d)	<u>St. v. Scott</u> , 186 Ariz. 503, 504, 924 P.2d 507 (Div. 1, 1996).
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JUVENILE

Juvenile Delinquency Proceeding		<u>McKeiver v. Pennsylvania</u> , 403 U.S. 528, 543, 29 L. Ed., 2d 647, 91 S. CT. 1976 (1971)
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POSSIBLY REQUIRE JURY

No Arizona case decision yet; this is not a complete Criminal list

OFFENSE	ENUMERATION CLASS MISD.	COMMENTS
Adultery	ARS § 13-1408A 3	Grave consequences/Moral Turp. <u>Matter of A 3 I & N 168 (BIA 1948)</u>
Contributing to Delinq. Minor	ARS § 13-3613 1	But <u>See Spitz</u> 127 Ariz. 405
Crime Against Nature (Sodomy)	ARS § 13-1411 1	All 3 Prongs. But <u>See Gathor v. U.S.</u> , 251 A.2d 644 (D.C. 1969) [Oral Sodomy, <u>Rex v. Jacobs</u> , 1 Russ & Ry. 331 (1817)].
Domestic Violence <div style="border: 1px dashed black; padding: 2px; width: fit-content;">See <u>Cantrell</u>, under "NOT JURY TRIABLE"</div>	ARS § 13-3601 1/2/3	A domestic Violence conviction or an order of protection renders the person a prohibited possessor of any firearm or ammunition. 18 U.S.C. §922 (g) (8) & (9). This disability may be lifted upon application. 18 U.S.C. §925 (c). <u>See immigration consequences. See ARS 25-332 (B)</u> The right to bear arms under Art. II § 26 of the Az Const. may warrant a Jury. <u>St. v. Strohson (Cantrell)</u> 190 Ariz. 120, 945 P.2d 1251, 1252 (f/n 1). <u>See Ohio v. Cheadle</u> , 507 N.E. 2d 426 (Ohio 1986)
Failure to Report treatment	ARS § 13-3806 3	May lose lic. ARS 32-1433/ARS 32-1663
Flying Under influence	28-8282 (formerly 28-1750) 1	<u>See Rothweiler</u> , 100 Ariz. 37. The statute itself does not mention a right to a jury unlike A.R.S. 5-395 (M) and 28-1381 (F).
Immigration Consequences <div style="border: 1px dashed black; padding: 2px; width: fit-content;">The Anti-terrorism and Effective Death Penalty Act (AEDPA) of 1996 has a provision which broadens the definition of a crime of moral turpitude. Public Law 104-132 AEDPA § 436 (a). <u>Any</u> second crime of moral turpitude causes deportability. In addition, Poss. of Narc. Paraphernalia, ARS 13-3415, is a deportable offense. 8 U.S.C. 1227(a)(2)(B) formerly 8 U.S.C. 1251 (a) (B) (1). But first time UPOM, 13-3405, for personal use and under 30 grams is not if clearly stated on the minute entry. A second conviction renders the Defendant deportable. Carrying a concealed weapon, ARS 13-3102, is a deportable offense even if classified as a misdemeanor. <u>See</u> 8 U.S.C. 51227(a)(2)(c) formerly 8 U.S.C. 5 1251 (2) (c). Almost any gun crime is a deportable offense. <u>Finally, stalking, violations of protective orders and domestic violence are deportable offenses.</u> 8 U.S.C. § 1227(a)(2)(E) (Illegal Immigration Reform and Immigrant Responsibility Act) (IRAIRA), Public Law 104-208, 110 Stat. 3009(1996).</div>	These all involve moral turpitude per immigration law: Aiding in Crime of Moral Turpitude. <u>Matter of E</u> , 6 I and N 788 (BIA-1955) Adultery - See above. Assault (depending on elements). <u>See Immi. Law and Crimes</u> at § 6.2 (a) Assault on police <u>Ciambelli ex rel Maranci v. Johnson</u> 12 F.2d 465 (D.C. Mass. 1926) <u>See Pima County Felony declination policy 5/23/90</u> But <u>See Bruce v. State</u> 126 Ariz. 271, 614 P.2d 813 Attempted Poss. Of Marijuana. <u>Matter of Bronszten</u> , 15 I and N 281 (BIA-1974) Domestic Violence, Assault. <u>Grageda v. INS.</u> , 12 F 3d 919 (9th Cir. 1993). Argument for Jury: The underlying Calif. Statute is very close to ARS § 13-1203 (A) (1) and the 9th Cir. Didn't focus on the felonious nature. Argument Against Jury: The underlying Calif statute calls for "Corporal injury resulting in a traumatic condition" [Cal. Penal Code § 273.5 (a)] and is a felony. <u>See also Matter of Tran</u> , Int. Decision #3271 (BIA-1996) But <u>see</u> 8 U.S.C. 1227 (a)(2)(e). Stolen Property. <u>Matter of Wojtkow</u> , 18 I & N 111 (BIA 1981) A trial judge was not required to inform a defendant of Collateral Consequences of a Conviction such as deportation. <u>St. v. Vera</u> , 159 Ariz. 237, 766 P.2d 110. However effective Dec. 2004 Rule 17.2 (F) R. Cr. Pr. Now requires a court to advise of immigration consequences on a Change of Plea, no contest or submission on the record. Collateral Consequences not provided in the charging statute can nonetheless be considered in determining the right to a jury. <u>See Dolny</u> , 778 P.2d 1196 (adverse impact on possible future professional license or occupation). But <u>See</u> dictum in <u>St. ex rel. McDougall v. Strohson (Cantrell)</u> 190 Ariz. 120, 945 P.2d 1251, 1256 (1997. En Banc). Dictum, of course, is not binding precedent. <u>Creach v. Angulo</u> , 186 Ariz. 548, 551-552, 925 P.2d 689, 692-93 (App. 1996).	
Indecent exposure	ARS § 13-1402a 1	Common Law. <u>Truet v. State</u> , 57 South.512 (1912) May require registration. ARS 13-3821
Lewd & Lascivious Acts	ARS § 13-1412 3 T.C.C. 11-28/29 1	Moral Turpitude. State violation may require sex offender registration. ARS 13-3821
Poss. Drug Paraphernalia	ARS § 13-3415 1	<u>See Dolny</u> 161 Ariz. 297 But <u>See Mitchell v. U.S.</u> , 683 A 2d 111 (D.C. 1996).
Prostitution	T.C.C. 11-28 & ARS 13-3214 (A) 1	Moral Turpitude/Common law. <u>See City of Pasco v. Mace</u> , 653 P.2d 618 (Wash. 1983); <u>Powers v. St.</u> , 370 So. 2d 854 (Fla. 1979) - But <u>See St. v. Lindsey</u> 883 P.2nd 83 (Haw. 1994); <u>Morgenthau v. Erlbaum</u> , 451 N.E. 2d 150 (N.Y. 1983); and <u>Marshall v. U.S.</u> , 302 A.2d 746 (D.C. 1973).
Public Sexual Indecency	ARS § 13-1403(A1) (A2) (A3) (A4) 1	Common Law/Moral Quality. May require sex offender registration. ARS 13-3821.
Theft	ARS § 13-1802(A1)-(A6) 1	All three Prongs. <u>See St. v. Thomas</u> , 780 P.2d 1197 (Or. 1989)
Unlawful use/ means of Trans.	ARS § 13-1803 Class 6 F.	C.A. Felony Declination Policy 5/23/90 allows reduction to C.1 Misd. <u>See A.R.S 13-702(g) (2)</u> <u>See</u> 161 Az 299, 778 P2d 1195

UNRESOLVED QUESTIONS:

A) If the demand for Jury trial is grounded on Art. 2 § 23 Ariz. Const. in a crim. case are you always entitled to a jury? See Dolny, 778 P.2d 1193, 1197, 161 Az. 297 (1989); See St. v. Strohson (Cantrell), 190 Ariz. 120, 945 P.2d 1251, 1257 (1997, En Banc).

B) Is domestic violence jury triable if the couple is going through a divorce with contested child custody? See ARS 25-403(E). See also 18 U.S.C. §922 (g) (8) & (9) and 8 U.S.C. § 1227 (a) (2) (c)

C) Can a defendant be denied a jury in a criminal case if there are, or could be, a parallel civil action that would not be jury triable upon a criminal conviction? (See A.R.S. 13-807). St. v. Kennedy, 60 P.3d 236 (2002)