

To: David K. Byers**June 22, 2000****Re: Surcharges on Monetary Assessments Imposed for Juvenile Offenses****Administrative Director of the Courts****I00-016
(R99-063)****Questions Presented**

Whether courts must assess and collect State penalty assessments (also known as surcharges) under Arizona Revised Statutes ("A.R.S.") §§ 12-116.01 and -116.02 on monetary assessments imposed for juvenile offenses.

Summary Answers

State penalty assessments under §§ 12-116.01 and -116.02 do not apply to monetary assessments imposed on juveniles for delinquent or incorrigible acts pursuant to A.R.S. §§ 8-341(G)(2)(I) or (J), or -321(F)(7). State penalty assessments, however, do apply to monetary assessments imposed against juveniles for: (1) driving under the influence; (2) civil or misdemeanor violations of motor vehicle statutes; (3) civil or misdemeanor violations of game and fish statutes; and (4) violations of local ordinances concerning parking, stopping, or standing.

Background

Arizona statutes require courts to impose and collect penalty assessments on: every fine, penalty and forfeiture imposed and collected by the courts for criminal offenses and any civil penalty imposed and collected for a civil traffic violation and fine, penalty or forfeiture for a violation of the motor vehicle statutes, for any local ordinance relating to the stopping, standing or operation of a vehicle or for a violation of the game and fish statutes in title 17.

A.R.S. §§ 12-116.01(A), -116.01(B), -116.02. Your opinion request asks about the application of the State penalty assessment to juvenile offenses. A.R.S. § 8-202(A). Juvenile offenses are generally denominated "delinquent acts" or "incorrigible acts." A "delinquent act" is defined as an act by a juvenile which if committed by an adult would be a criminal offense or a petty offense, a violation of any law of this state . . . or a violation of any law which can only be violated by a minor and which has been designated as a delinquent offense, or any ordinance of a city, county or political subdivision of this state defining crime.

A.R.S. § 8-201(10). An incorrigible juvenile is a child who "[c]ommits any act constituting an offense which can only be committed by a minor and which is not designated as a delinquent act." A.R.S. § 8-201(15)(e). Generally, if a juvenile court finds a juvenile to be delinquent, the court may order the juvenile "to pay a reasonable monetary assessment." A.R.S. § 8-341(G)(2). Similarly, a court may order an incorrigible child to pay a monetary assessment. A.R.S. § 8-341(I). Monetary assessments may also be imposed through diversion programs for juveniles accused of committing delinquent or incorrigible acts. A.R.S. § 8-321(F)(7).

The Legislature has also specifically addressed penalties and procedures for some juvenile offenses. Although the juvenile court has jurisdiction over civil traffic violations committed by juveniles, A.R.S. § 8-202(B), the presiding judge of a county may decline jurisdiction over these matters, and in those situations "juvenile civil traffic violations shall be processed, heard and disposed of in the same manner and with the same penalties as adult civil traffic violations." A.R.S. § 8-202(D). In addition, several offenses that are not classified as felonies may be heard by juvenile hearing officers designated by the presiding juvenile court judge. A.R.S. § 8-323(B). These include violations of Title 28, the "purchase, possession or consumption of spiritous liquor," violations of boating or game and fish laws, violations of "[a]ny city, town or political subdivision ordinance," and violations of curfew laws, truancy laws, laws against graffiti, and laws against possessing or purchasing tobacco. A.R.S. § 8-323(B). A juvenile who violates the above offenses may be ordered to pay "the monetary assessment or penalty that is applicable to the offense . . . plus lawful surcharges and assessments payable to the public agency processing the violation." A.R.S. § 8-323(E) (5). If no monetary assessment or penalty is specified, the juvenile may be ordered to pay "not more than one hundred fifty dollars plus lawful surcharges and assessments payable to the public agency processing the violation." A.R.S. § 8-323(E)(5).

Analysis

The State penalty assessments apply to financial penalties imposed for the following: (1) criminal offenses; (2) civil traffic violations; (3) violations of the motor vehicle statutes; (4) violations of any local ordinance relating to the stopping, standing, or operation of a vehicle; and (5) violations of the game and fish statutes in title 17. A.R.S. §§ 12-116.01(A), -116.01(B), -116.02(A). To determine whether the State penalty assessment applies to juvenile offenses, each category of offense subject to the penalty assessment requires separate analysis.

1. Criminal Offenses

The Legislature did not expressly apply the State penalty assessments under §§ 12-116.01 and -116.02 to penalties assessed for delinquent acts or incorrigible acts. Even though delinquent acts include acts that would be criminal offenses if committed by an adult, A.R.S. § 8-201(10), an adjudication for a delinquent act is not a conviction for a criminal offense.⁽¹⁾ See A.R.S. § 8-207(A). Similarly, incorrigible acts are not criminal offenses. A.R.S. § 8-201(15). Therefore, juvenile adjudications are not criminal offenses subject to the State penalty assessments.

The language in the statutes governing juvenile adjudications further supports the conclusion that the State penalty assessments do not generally apply to these proceedings. The language in A.R.S. §§ 8-341(G)(2), (J) and (I), permits the court to order a "monetary assessment" for a juvenile adjudicated delinquent or incorrigible, but does not mention additional surcharges or assessments. *Cf. State v. Roscoe*, 185 Ariz 68, 71, 912 P.2d 1297, 1300 (1996) (when statute expressly includes certain items it excludes items not mentioned). Similarly, the language of A.R.S. § 8-321(F)(7) provides that juveniles who are diverted from prosecution may be ordered to pay monetary assessments for delinquent or incorrigible acts, but does not mention additional surcharges or assessments. For these reasons the State's surcharge on criminal offenses does not apply to juvenile proceedings.

2. Civil Traffic Offenses

The Legislature authorized the presiding judge of juvenile court to decline jurisdiction in civil traffic cases and, under these circumstances, juvenile civil traffic violations "shall be processed, heard and disposed of in the same manner and with the same penalties as adult civil traffic violations." A.R.S. § 8-202(D). This means that juveniles would be subject to the State penalty assessment, just as adult offenders are. See also A.R.S. § 28-121(C) (requiring the court to impose surcharges pursuant to A.R.S. §§ 12-116.01 and -116.02 on violations of title 28). In addition, civil traffic violations may be heard by designated juvenile hearing officers under A.R.S. § 8-323, and that statute expressly provides for payments of surcharges and assessments. A.R.S. § 8-323(E)(5). For these reasons, civil traffic violations committed by juveniles are subject to the State surcharges.

3. Violations of Motor Vehicle Statutes, Game and Fish Statutes and Certain Local Ordinances

The State penalty assessment also expressly applies to violations of motor vehicle statutes, game and fish statutes, and local ordinances concerning parking, stopping, or standing. See A.R.S. §§ 12-116.01, -116.02. If those violations involve civil offenses or misdemeanors, they are also subject to A.R.S. § 8-323, which authorizes designated hearing officers to hear certain civil and misdemeanor offenses committed by juveniles. Because A.R.S. § 8-323(E) expressly permits an order requiring a juvenile to pay the "lawful surcharges and assessments payable to the public agency processing the violation," the State penalty assessment applies to any offense within A.R.S. §§ 12-116.01, -116.02 that is also subject to A.R.S. § 8-323. Therefore, misdemeanor and civil violations by juveniles of motor vehicle statutes, game and fish statutes, and local ordinances concerning parking, stopping or standing are subject to the State surcharges. 4. Driving Under the Influence Offenses Subject to A.R.S. § 8-343

"Violations of motor vehicle statutes" that are subject to the State penalty assessment under A.R.S. §§ 12-116.01 and -116.02, include driving while under the influence offenses pursuant to A.R.S. §§ 28-1381, -1382, -1383. The Legislature has established specific requirements for juvenile adjudications for driving under the influence, and the statute governing those offenses provides that violators must pay "any applicable surcharges and assessments." A.R.S. § 8-343(D). Therefore, juvenile violators of A.R.S. §§ 28-1381, -1382, and -1383 are subject to the surcharge established in A.R.S. §§ 12-116.01 and -116.02.

Conclusion

Because delinquent or incorrigible acts are not criminal offenses, penalty assessments do not apply to monetary assessments ordered pursuant to most juvenile adjudications. However, the State penalty assessment applies to civil traffic violations, and misdemeanor or civil violations of the motor vehicle statutes, local ordinances relating to stopping, standing or parking vehicles, and game and fish statutes. The State penalty assessments also apply to juveniles adjudicated for driving under the influence.

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1. A juvenile prosecuted as an adult and convicted is subject to the penalty assessments because the case involves a "criminal offense." *See* A.R.S. §§ 8-327, 13-921 (criminal prosecutions of juveniles).

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