

Maricopa County Attorney's Office Prosecution Policies and Procedures

CHAPTER PLEA AGREEMENTS	EFFECTIVE DATE 08/13/2020	PROCEDURE # 7.4
SECTION REPETITIVE OFFENDERS		
DISTRIBUTION TRIAL ATTORNEYS	REVISION DATE 12/1/2020	REVISION # 1

The following plea policy applies to cases where a defendant has multiple open cases and/or prior felony convictions. This policy is a guideline, and care should be taken to apply the facts and circumstances of each case to achieve a just result that protects the rights of victims, the safety of the community, and the opportunity for the defendant's rehabilitation, when appropriate.

As described in Prosecution Policy 6.2, prior in state or out of state convictions for offenses eligible for complete expungement under A.R.S. § 36-2862, which includes most Possession of Marijuana, Possession of Narcotic Drugs based on Cannabis, and any related possession of paraphernalia charges, should not be alleged as prior offenses or considered as prior felonies when determining an appropriate offer. A defendant's prior performance on a probation grant for any of these convictions may, however, be considered in determining whether probation is an appropriate offer.

A. DRUG POSSESSION CASES

For defendants charged with the simple possession of a prohibited substance, if the defendant is not eligible for diversion, the presumption is that the defendant will be placed on supervised probation with an emphasis on treatment of the defendant's substance abuse issues. A plea to a misdemeanor offense is appropriate when that is the likely outcome after trial, but otherwise a plea should be to an undesignated or a felony offense as appropriate given the defendant's prior convictions.

A prison disposition should only be considered after weighing the following factors:

1. The number, nature, and age of the defendant's prior felony convictions,
2. The number of previous probation grants,
3. The defendant's good faith participation in previous attempts at probation and drug treatment.

Serious consideration should be given to whether the defendant has a history of victimizing others to support his/her drug habit, their previous attempts at rehabilitation and the likelihood that if the drug habit continues others will continue to be victimized.

Pleading a drug possession case with one or more prior convictions should be used only as a last resort when the defendant has shown an unwillingness to engage in multiple treatment opportunities, their criminal history shows a willingness to repeatedly victimize others, and no other alternative will reasonably protect the community.

B. NON-DRUG POSSESSION CASES

When determining whether the presumptive offers listed below should be modified to make an offer harsher or more lenient, the attorney should consider the following factors:

1. The nature and circumstances of the present offense.
2. Any harm done to the victim(s) in the present offense.
3. The victim(s) input regarding the appropriate resolution.
4. The defendant's prior criminal history, including:
 - a. The age of the prior convictions,
 - b. The nature of the prior convictions,
 - c. The harm done to victims in previous cases,
 - d. The defendant's propensity for violence.
5. Whether the defendant was on probation at the time of the offense.
6. The number of previous probation grants and his/her performance on probation.
7. The number of and length of prior terms of incarceration.
8. Any documented mental health issues.
9. Whether the defendant has been placed in the Repeat Offender Program by a law enforcement agency or identified as a Gang Member.
10. Any other information that gives insight into the Defendant's risk to reoffend and any other factor necessary to reach a just resolution.
11. Any mitigation disclosed to or identified by the state.

Offenders with multiple pending offenses not committed on the same occasion and no prior convictions.

If the defendant has two or more pending felony charges not committed on the same occasion, the presumptive offer is to plead to two felony offenses, at least one of which is a designated felony, committed on different dates, when possible, with a stipulation to supervised probation in each offense and any appropriate jail term.

Category One offenders after trial

If a defendant would be sentenced as a Category One Repetitive Offender after trial, the presumptive offer is a guilty plea to the highest charge with a stipulation to probation.

Category Two offenders after trial

If a defendant would be sentenced as a Category Two Repetitive Offender after trial, the presumptive offer is a plea to the highest charge with a stipulation to prison.

Category Three offenders after trial

If a defendant would be sentenced as a Category Three Repetitive Offender after trial, the presumptive offer is a plea to the highest charge with a stipulation to prison as a Category Two Repetitive Offender.

Although uncommon, consideration should be given to offering a plea to the highest charge as a Category Three Repetitive Offender when the facts and circumstances make such an offer appropriate. Some facts which might justify such an offer in a given case include:

1. The defendant has three or more historical felony convictions that caused harm to victims.
2. The defendant has had multiple probation grants in the past and has committed new felony offenses after each of them.
3. The defendant has served significant prison terms but has committed new felony offenses after release.
4. The defendant was on probation or community supervision at the time of the offense.
5. The defendant has multiple open cases.
6. The harm caused to the victim(s) in the present case is significant.