

Maricopa County Attorney's Office Prosecution Policies and Procedures

CHAPTER PLEA AGREEMENTS	EFFECTIVE DATE 08/13/2020	PROCEDURE # 7.6
SECTION SEX OFFENSES		
DISTRIBUTION TRIAL ATTORNEYS	REVISION DATE	REVISION #

Due to the long-term impacts on victims and families, sexual offenses may be appropriate for significant prison sentences and lengthy, potentially lifelong, probation monitoring. Prior to making a plea offer, the case must be staffed with the Bureau Chief, Assistant Bureau Chief or the Bureau Chief's designee, along with at least two members of the Sex Crimes Bureau. DCAs should make every effort to obtain victim input on the case before any offer is extended. If the facts of the case so warrant it is not required that a plea offer be extended, Bureau Chief approval is required if no offer will be made.

A. FACTORS TO CONSIDER IN HANDS-ON OFFENSES

In cases where the defendant has had "hands-on" contact with the victim, the DCA should consider all facts and circumstances, including the following factors when determining what offer, if any, should be extended:

1. Victim input;
2. Strength of the evidence in the case;
3. Critical witness availability, including the victim's ability to testify;
4. The danger that the defendant will reoffend and the defendant's deviancy;
5. The ages of victim and the defendant;
6. The number of victims and offenses;
7. Duration of molest/victim's age at onset of molest;
8. Force, threats, coercion or manipulation or use of weapons or objects;
9. Whether the defendant provided drugs/alcohol to the victim or took advantage of the victim's use of drugs/alcohol;
10. Whether pornography was possessed or used or photos taken;
11. Prior convictions and the nature of the prior offenses;
12. Other uncharged offenses or sexual misconduct;
13. Previous probation supervision and treatment/counseling opportunities;
14. Psychological and/or physical trauma suffered by the victim;
15. Case agent input;
16. Relationship between victim and defendant;
17. Degree of defendant's planning and preparation;
18. Whether the defendant knew if the victim had been previously molested; and
19. Any other relevant factor.

B. DCAC/SEXUAL ASSAULT CASES

This subsection does not apply to cases involving consensual sexual acts occurring when the defendant was between 18 and 24 years old and the victim was either 13 or 14 years old, unless there was a relationship of trust between them as defined in A.R.S. § 13-1401.

For a person charged with sexual assault the presumptive offer is a plea to a class 2 felony with a stipulation to prison.

For offenses where the legislature has mandated a mandatory minimum sentence of 35 years or more, the presumptive offer is for a term no less than 20 years if identity and consent are not viable issues, and the case contains at least one of the following:

1. The defendant specifically admits to sexually assaulting the victim(s);
2. The charges involve multiple victims who do not know the defendant and who are unknown to each other;
3. The sexual act(s) is documented on film or another similar medium that also shows the identities of the perpetrator and victim(s);
4. DNA taken from the victim's or defendant's body supports the charged offense;
5. There is an unbiased eyewitness to the sexual acts; or
6. Fingerprint evidence conclusively implicates the defendant.

C. OTHER OFFENSES

1. Child Sex Trafficking

The presumptive plea offer for those charged with an offense under A.R.S. § 13-3212(A)(1-8) where the victim was 14 years of age or younger is no less than 10 years in prison. The plea offer may be increased or decreased based upon the factors in section A.

2. Sexual Exploitation of a Minor

The presumptive plea offer for those charged with possessing multiple images of child sexual abuse is 10 to 17 years flat time in prison. However, individual circumstances may warrant increasing or decreasing the plea offer when the factors are considered:

- a. The number of images possessed;
- b. The manner in which the images are stored/organized;
- c. The nature of the sexual activity depicted;
- d. The ages of the children depicted in the images;
- e. Whether the defendant possessed or used the images for personal or commercial use;
- f. The danger that the defendant will reoffend;

- g. Use of encryption technology or other protection devices by the defendant, including efforts to conceal his or her identity;
- h. Possession of any additional items(s) or behaviors that indicate a proclivity towards sexual interest in children;
- i. Where there is any evidence of hands on sexual offenses;
- j. The defendant's willingness to cooperate with treatment; or
- k. Any other relevant factor.

Juvenile Offenders: If a defendant is under 18 at the time a child exploitation (possession only) offense is submitted, it will be filed in juvenile court unless the Chief Deputy approves an adult filing.

3. Luring a Minor for Sexual Exploitation

The presumptive plea offer for defendants charged with Luring a Minor for Sexual Exploitation, a class 3 felony, dangerous crime against children, or Attempted Sexual Conduct With a Minor based on conduct constituting the same offense as Luring, is a plea to the charge and lifetime probation with a one year flat jail term to be served as an initial condition of probation. However, individual circumstances may warrant increasing or decreasing the plea offer when the following factors are considered:

- a. The age difference between the victim and the defendant (or, in the case of an undercover detective, the age that the defendant thought the person was);
- b. The defendant traveled across state lines or a significant distance to commit the offense;
- c. The defendant exhibited a substantial degree of preparation and planning to have sexual contact with the child;
- d. A likelihood that the defendant will reoffend;
- e. Possession of any items(s) or behaviors that indicate a proclivity towards sexual interest in children;
- f. Any other relevant factor.

D. PROBATION ISSUES

1. **Multiple Probation Tails Where Available.** For Defendants who have been charged with multiple counts of DCAC offenses or sexual assault any offer should include two "attempt" counts with stipulated lifetime probation, in addition to any other policy requirements.
2. **Probation Length.** For sexual offenses that are not DCAC offenses or sexual assault, a lengthy term of probation (10 years plus) should be included in the plea agreement if possible.
3. **Felony Designation for Lifetime Probation.** Whenever lifetime probation is an appropriate disposition, the defendant must plead to a designated felony.

E. JUVENILE OFFENDERS

Plea offers in these cases must be staffed with the Bureau Chief for an appropriate offer.

F. RISK ASSESSMENTS

Risk assessments can be a useful tool to help determine an appropriate plea offer in certain cases. Risk assessments that do not comply with ATSA guidelines or which are redacted will not be considered absent Bureau Chief approval.