

# Maricopa County Attorney's Office Prosecution Policies and Procedures

CHAPTER PLEA AGREEMENTS	EFFECTIVE DATE 08/13/2020	PROCEDURE # 7.2
SECTION DRUG OFFENSES		
DISTRIBUTION TRIAL ATTORNEYS	REVISION DATE July 26, 2021	REVISION # 2

## A. DRUG POSSESSION OFFENSES GENERALLY

It is a presumption that all first-time drug possession offenses will be referred to an MCAO approved drug diversion program.

Second or subsequent drug possession cases may also be appropriate for an MCAO approved diversion program. Factors to consider in making such a determination include:

1. Defendant's participation in past diversion and/or treatment programs;
2. The amount and type(s) of drugs possessed;
3. The length of time between offenses; and
4. Defendant's criminal history.

If a defendant rejects an MCAO approved drug diversion program, a misdemeanor or class 6 undesignated offense is appropriate, depending on the type and amount of drugs involved.

When a case involves both drug possession offenses and other felonies, or there are multiple open cases involving both drug possession offenses and other felonies, any plea offer to a felony charge should be to a non-drug possession offense whenever possible. The DCA should also consider whether the defendant should plead to a drug charge as well due to the requirements of A.R.S. § 13-901.01.

## B. FINES

The legislature has determined that it is appropriate to impose mandatory fines on some drug possession offenses and those fines are used to fund various criminal justice programs. For that reason, when pleading a case that would require a mandatory fine to a charge that has no mandatory fine, DCAs should include a financial consequence in the plea agreement. Consistent with the intent of the legislature, these financial amounts will vary based on the drugs involved in the original charges as follows:

1. For narcotic drugs the minimum fine is \$1200.
2. For dangerous drugs the minimum fine is \$750.
3. For marijuana charges the minimum fine is \$500.

If, at the time of sentencing, the court decides to mitigate a stipulated fine as provided in A.R.S. § 13-825 in a drug possession case, the State will not withdraw from the plea agreement.

C. SALE, TRANSPORTATION, OR POSSESSION FOR SALE OF DRUGS

DCAs should consider the following factors when determining whether the presumptive offers listed below are appropriate for a specific case:

1. The nature of the defendant's criminal history (age, circumstances, whether drug possession, property related or violent);
2. Whether the defendant has previously received drug treatment;
3. Whether there is any indicia that the defendant is a member of a drug trafficking organization; and
4. Any mitigation.

DCAs should not reduce a sale, transportation, or possession for sale of narcotic or dangerous drug to any charge which is eligible for mandatory probation under A.R.S. § 13-901.01.

When determining an appropriate plea offer for a case involving the Sale, Transportation, or Possession for Sale of Drugs, the DCA should consider the amount of drugs involved as follows:

For offenses involving Narcotic or Dangerous Drugs:

1. If the amount was at or exceeding threshold, the presumptive offer is a plea to the charge, with a stipulation to supervised probation and 6 months jail. The DCA may stipulate to early release upon successful completion of an appropriate treatment program.
2. If the amount was more than one ounce but less than four ounces, the presumptive offer is a plea to a designated felony with a stipulation to prison.
3. If the amount was more than four ounces but less than one pound, the presumptive offer is a class 4 felony with a stipulation to prison.
4. If the amount was more than one pound, the presumptive offer is plea to a class 3 felony with a stipulation to prison.

For offenses involving Marijuana:

1. If the amount was four pounds but less than 16 pounds, the presumptive offer will include a jail term.
2. If the amount was over 16 pounds, the presumptive offer is a prison disposition.