

Maricopa County Attorney's Office Prosecution Policies and Procedures

CHAPTER TRIAL PREPARATION	EFFECTIVE DATE 10/15/94	PROCEDURE # 6.2
SECTION SENTENCING ENHANCEMENTS AND AGGRAVATING FACTORS		
DISTRIBUTION TRIAL ATTORNEYS	REVISION DATE 12/1/2020	REVISION # 6

A. General Policy Regarding Sentencing Enhancement Allegations

Arizona law provides sentencing ranges that are based on an individual defendant's criminal history and the seriousness of their conduct. The sentencing range is determined by the sentencing enhancement allegations that are proven to a judge or jury following trial. To provide notice to the defendant of the sentencing range after trial, these sentencing enhancement allegations must be alleged before trial. Except as noted in section (B), prior felony convictions and allegations of dangerousness will be alleged in every case when the statutory requirements are met unless the DCA, after consultation with the bureau chief, determines that the allegation would not be appropriate based on all the facts and circumstances in the case.

DCAs must receive the approval of their bureau chief before dismissing allegations of prior convictions or dangerousness after a jury has been empaneled.

B. Limitations and Guidelines for Specific Allegations

1. Life sentence for a serious offense. A.R.S. § 13-706(A) provides for life imprisonment if a defendant is convicted of a "serious offense" and has previously been convicted of two or more serious offenses not committed on the same occasion. This sentencing enhancement allegation can only be filed with division chief approval.
2. Serious drug offender. A.R.S. § 13-3410 provides for a 25 year to life sentence for a serious drug offender. This sentencing enhancement allegation can be filed only with division chief approval.
3. Multiple offenses not committed on the same occasion. A.R.S. § 13-703(A) provides that when a person is convicted of multiple felony offenses that are not committed on the same occasion but are consolidated for trial, the sentencing range is less than the range for someone with historical prior felony convictions but more than the range for a first time felony offender. Therefore, if crimes that were committed on separate occasions are, or can be, properly joined for trial, DCAs must not separately indict or move to sever charges to obtain the higher sentencing range for historical prior felony convictions.

4. Multiple convictions that are not historical priors. A.R.S. § 13-703(A) also provides for enhanced sentencing for offenders who have prior felony convictions that are not historical priors, usually due to the age of the conviction. In most circumstances, the DCA will file the appropriate sentencing allegation in these cases to prevent a repetitive felon from being sentenced as a first time felony offender. However, DCAs should consider the age and nature of the prior offense, age of the defendant when all offenses were committed, and all the facts and circumstances of the current case, in determining whether this allegation is appropriate in a specific case.

C. Prior Convictions for Possession of Marijuana and Cannabis

If a defendant was previously convicted of Possession of Marijuana, Possession of Narcotic Drugs where the drug was Cannabis, or any related drug paraphernalia offense, A.R.S. § 36-2862 makes expungement mandatory, upon application, in most circumstances. Once expunged, the law prohibits that conviction from being used for any sentencing enhancement purpose. Before filing a sentencing enhancement allegation based on a conviction for Possession of Marijuana, Possession of Narcotic Drugs based on Cannabis, or any related drug paraphernalia charge, a DCA must ensure that the offense is not eligible for expungement pursuant to A.R.S. § 36-2862. Convictions from outside Arizona for offenses that would fall under § 36-2862 if they had been committed in Arizona, should not be alleged for sentence enhancement purposes.

D. Aggravating Circumstances

DCAs should allege all aggravating circumstances listed in A.R.S. § 13-701(D) that are supported by the evidence when opening a file. These factors should be modified if additional information or evidence is discovered during the course of a case.