

Maricopa County Attorney's Office Prosecution Policies and Procedures

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| CHAPTER DIVERSION PROGRAMS | EFFECTIVE DATE 2/1/2021 | PROCEDURE # 17.8 |
| SECTION DOMESTIC VIOLENCE EXCESSIVE RESPONSE DIVERSION | | |
| DISTRIBUTION TRIAL ATTORNEYS | REVISION DATE | REVISION # |

Pursuant to A.R.S. § 11-361, the MCAO has created a special supervision program to divert or defer certain domestic violence offenders who have themselves been the victim of domestic violence into a treatment and education program in lieu of pursuing prosecution. The primary goals of this Domestic Violence Excessive Response (DVER) Diversion Program are to provide a non-punitive opportunity to the offender, reduce recidivism through an evidenced-based program, and preserve limited prosecutorial resources. Those who successfully complete the program will have their charges dismissed with prejudice. The program will support and encourage the offender to make positive, self-sustaining, and safe changes in their lives, while holding them accountable for their criminal behavior. A private provider selected by MCAO provides services for this program. The service provider will administer the program in accordance with the requirements established by MCAO. Entrance into the program is the sole discretion of MCAO, and no offer of diversion need be made simply because a defendant meets the criteria.

A. OFFENDER ELIGIBILITY CRITERIA

General eligibility requirements for a defendant to be considered for DVER are listed below.

1. Pursuant to A.R.S. § 11-361, the offender has no prior convictions for a serious offense as defined in 13-706, an offense under title 13, chapter 14, a dangerous offense as defined in section 13-105, or a dangerous crime against children as defined in section 13-705.
2. Pursuant to A.R.S. § 11-361, the offender has not been convicted three or more times of personal possession of drug paraphernalia as defined in section 13-3415 or a controlled substance as defined in section 36-2501.
3. The offender has no prior felony convictions within the last five years and has no historical prior felony convictions. However, if the offender has only one prior felony conviction and that conviction is an Aggravated DUI that was committed more than five years before the current offense, excluding any time spent incarcerated, that historical prior will not bar participation in this program.
4. The offender has no other pending criminal cases, besides personal possession of drugs.
5. The offender is not on felony probation.
6. The offender has not completed any felony diversion program within the last five (5) years.

7. The offender's Recidivism Risk Score (Proxy Score) is four (4) or lower.
8. The offender has no holds or detainers that would prevent the completion of the program.
9. The offender has no misdemeanor convictions for child abuse or other crimes involving the abuse or harm or potential or attempted abuse or harm of children.
10. The offender can demonstrate that the victim has a history of committing acts of domestic violence against the offender. This history does not have to be contained in police reports but does need to be demonstrated by means other than mere self-reporting.

B. CASE ELIGIBILITY CRITERIA

1. To be eligible, all cases must meet the following criteria:
 - a. The case must present a reasonable likelihood of conviction;
 - b. The case must be filed (there is no pre-file diversion for this program); and
 - c. Total restitution owed does not exceed \$2,000.
2. The following specific types of cases are eligible for this program:
 - a. The case involves an adult committing an offense against an intimate domestic partner.
 - b. The case involves assault-type behavior that is legally excessive, in that it is not justified under the justification statutes, and it subjects the offender to criminal charges.
 - c. If the offender is charged with multiple counts, all offenses must have occurred on the same date.
 - d. The case does not involve the infliction of serious physical injury.

C. GENERAL CONSIDERATIONS FOR DCAs

In addition to the criteria established above, when deciding whether to resolve a case with an offer to participate in the DVER Diversion Program, DCAs should carefully consider the primary goal of the Diversion Program as well as an individual offender's suitability for such a program and the need to protect the public. When the DVER Diversion Program is offered as an alternative to prosecution, it should be offered as early in the prosecution of the case as possible, generally before arraignment. In deciding whether the program is appropriate in a given case, in addition to the eligibility factors, the DCA should consider the following factors and criteria:

1. The number of and nature of any previous arrests, any previous charges that were not filed by MCAO and the reason they were not charged.
2. The age and nature of any prior convictions.
3. Any history of FTAs or other matters that would raise doubts as to the offender's ability to successfully complete the program.
4. Whether the defendant has previously completed any criminal diversion program and, if so, how long ago the program was completed, and the nature of the treatment provided by that program, if known.
5. Whether the offense was an act in a series of abusive events.
6. Whether the offender has been the subject of any Arizona Department of Child Safety referrals.
7. Whether drug or alcohol use was involved and whether there appears to be a substance abuse issue.
8. Whether the offender previously had received counseling, education, or treatment similar to that to be provided in the DVER Diversion Program.
9. The nature, severity, and location of any injuries and whether the victim needed medical treatment.
10. Whether the attitude of the offender is such that he or she is willing to admit wrongdoing and willing to accept counseling and assistance.
11. The explanation offered by the offender and the victim for the offender's actions.

D. VICTIM ISSUES

Before resolving any case with the DVER Diversion Program, the DCA must ensure that the victim has been given the opportunity to be fully informed about the goals and requirements of the program. The victim's input should be fully considered before deciding whether the program is an appropriate resolution for a particular case. Unless there are specific reasons to do otherwise and any alternative has been specifically approved by the victim, payment of restitution in full is required for the successful completion of the program. The DCA will draft a restitution ledger for the service provider which will include the name of the victim, their payment priority, and the amount they are owed. All individual victims will be priority 1 and business and insurance companies will be priority 2.

E. COMPLETION, TERMINATION AND RE-ENTRY

In accordance with the guidelines established by the MCAO, the DVER Diversion service provider will monitor the defendant's performance. If the service provider terminates a defendant from the program, the provider will notify the MCAO and include the reasons for the termination. Generally, a motion to reinstate the prosecution should be filed. However, before filing a motion to reinstate the prosecution, the prosecutor must review the termination report and, if it appears that the termination is due solely to an offender's non-payment of program costs and fees (other than restitution), the case should be referred to the Director of the Diversion Strategies Group. The Director will review the termination report and consult with the provider to review the offender's financial assessment application, financial responsibility determination, and any other available information regarding the offender's financial circumstances. The Director will then discuss the case with the assigned DCA and the DCA will determine whether the prosecution should be reinstated.

Given the nature of this particular intervention program, offenders who fail to successfully complete the program will not be offered another opportunity to resolve the criminal matter with participation in the DVER Diversion Program.

The service provider will notify the MCAO when a defendant successfully completes the program. Upon receipt of notification of successful completion, including the payment of restitution in full, MCAO shall file a motion to dismiss the case(s) with prejudice.

F. DEVIATIONS

Except for the statutory limitations described in sections (A)(1) and (2), the bureau chief may grant deviations from the requirements of section (A) and (B) to allow an otherwise ineligible defendant to participate in this program. The fact of and reason for any deviation should be specifically detailed in the case notes.