

Maricopa County Attorney's Office Prosecution Policies and Procedures

CHAPTER DIVERSION PROGRAMS	EFFECTIVE DATE May 18, 2020	PROCEDURE # 17.5
SECTION JUSTICE COURT DIVERSION PROGRAMS		
DISTRIBUTION CRIMINAL TRIAL ATTORNEYS	REVISION DATE March 15, 2021	REVISION # 1

The Maricopa County Attorney's Office is committed to the efficient and just resolution of misdemeanor cases in the various justice courts. Recognizing that diversion programs are in place in municipal courts throughout the county and that these programs can serve to educate offenders and ultimately remove them from the criminal justice system, MCAO has created the following diversion program for eligible defendants who are charged with eligible crimes in the various justice courts.

A. ELIGIBILITY REQUIREMENTS

To be eligible for a diversion alternative all of the following facts must be true:

1. Pursuant to A.R.S. § 11-361, the offender cannot have any prior convictions for any of the following: 1) a serious offense as defined in A.R.S. § 13-706; 2) an offense under title 13, chapter 14; or 3) an offense that is defined as dangerous or dangerous crime against children in A.R.S. § 13-105.
2. Pursuant to A.R.S. § 11-361, the offender has not been convicted three or more times of personal possession of drug paraphernalia or any controlled substance as defined in section 36-2501.
3. The defendant has no historical prior felony convictions and no misdemeanor convictions within the past five years.
4. The defendant has not participated in any prior diversion program.
5. The complaint contains only one charge or one additional closely related charge that also falls within these criteria.
6. The defendant has no other pending criminal charges.
7. The defendant is charged with one of the following offenses:
 - a. Minor in Possession of Alcohol or Minor Consumption where the defendant was not in possession of forged identifications.
 - b. Open Container, but if in a vehicle needs Bureau Chief approval
 - c. Possession of Drug Paraphernalia
 - d. Non-Moving Traffic Offenses
 - e. Driving on a Suspended License

- f. Disorderly Conduct where there is no physical contact or threatening behavior between the parties.
- g. Truancy or Parent Truancy
- h. County code violations except food violations
- i. Shoplifting without monetary loss
- j. Trespassing, business victim only
- k. Littering
- l. Fishing without a license
- m. Furnishing Tobacco to a Minor
- n. Any other misdemeanor offense that does not involve a victim can be diverted with bureau chief approval.

B. PROCEDURE

1. In preparation for the first status conference, the assigned DCA will review the complaint and criminal history to determine if the charge and defendant are eligible and appropriate for diversion.
2. If diversion is appropriate, the DCA will offer the defendant the following three options to resolve the case:
 - a. the defendant can enter a guilty plea to the charge,
 - b. the case can be set for trial, or
 - c. the defendant can agree to suspend prosecution to participate in a diversion education class.
3. If the defendant chooses the third option, the defendant will complete the diversion paperwork which includes an acknowledgment of responsibility for the offense charged and an avowal that they meet the eligibility requirements for the program.
4. The DCA then files a motion pursuant to Rule 38, Arizona Rules of Criminal Procedure, requesting that prosecution be suspended for 12 months.
5. Within 90 days of the suspension of prosecution, the provider will provide documentation indicating whether the defendant has successfully completed the diversion program.
6. Upon receiving notification that a defendant has completed the program from the provider, the DCA will file a motion to dismiss the case with prejudice.
7. If the defendant fails to successfully complete the program within 90 days, the DCA will file a motion to resume prosecution pursuant to Rule 38.2. Note that the case must be tried within 90 days of the date the order to resume prosecution is filed.
8. In all cases where prosecution is suspended for a diversion program, the DCA will ensure that the case is routed for sign off and PbK data entry after the case is resolved.

Support staff will complete PbK data entry on these cases following the procedures established by the bureau chief.

C. DEVIATIONS

If the DCA believes that any portion of this policy should not apply to bar a particular defendant from a diversion opportunity, the matter should be discussed with the bureau chief. Any of the requirements of this policy may be deviated from in an appropriate case with bureau chief approval except for the statutory requirements noted above and any case involving outstanding restitution cannot be placed into diversion. The fact of and reason for any deviation should be specifically detailed in the case notes.