

## OFFERS IN FELONY CASES PUNISHABLE BY 5 OR MORE YEARS

**Purpose:** to ensure that attorneys extend offers in serious felony cases that are based upon a weighing of aggravating and mitigating factors, are informed by historical sentencing statistics, and permit for the appropriate exercise of discretion in a transparent manner. Initial offers shall be made using a standardized template that clearly explains the logic supporting the offer. Offers may not be based in any part upon the actual or perceived gender, race, ethnicity, sexual orientation, or immigration status of the defendant. Attorneys shall use the below process and template, recognizing that the process does allow for subjective assessment of litigation risk and weighing of relevant sentencing factors.

**Note:** this process should not be construed to permit an offer that would result in an illegal sentence or noncompliance with a mandatory minimum requirement.

### **Standardized Process for Initial Serious Felony Offers:**

- **Step 1:** Retrieve the statewide historical sentencing data for each qualifying felony charge alleged in the Information.
- **Step 2:** Review the appropriate data to determine:
  - The **most common type of sentence** (or mode) for each felony count. If 6/10 sentences for the same charge result in probation, this is your mode form of sentence.
  - The **mean average sentence** within this type.
  - The historic **range** of sentences that have been imposed.
- **Step 3:** Calculate the State's chance of winning at trial as a factor indicating litigation risk, and compare that to the historic average sentences you've reviewed above. Identify aggravating and mitigating factors. Weigh those factors and make a subjective adjustment to the litigation risk-adjusted calculus.
  - **Examples of aggravating factors:** violent criminal history; lengthy criminal history; history of failing to abide by court orders; repeated offenses against the same victim. *This is a non-exhaustive list.*
  - **Examples of mitigating factors:** substance abuse disorder; mental illness; poverty; educational deficit. *This is a non-exhaustive list.*
- **Step 4:** Make the offer. Set a deadline. Stick to your deadlines. Remember that your best offer is made up front.

**\*\*OFFER TEMPLATE BEGINS\*\***

Dear [REDACTED],

I am writing to extend a plea and sentencing offer to [REDACTED] should he/she choose to accept responsibility for his actions and their impact on [REDACTED] and the peace and dignity of the State. This offer is predicated upon acceptance of responsibility, litigation risk, and in consideration of the need to allocate the State's limited resources efficiently. Should the case proceed to trial or a contested sentence, the State is will almost certainly recommend a different sentence.

**Victim Input on Sentencing**

\*If known and not previously identified\*

**Sentencing Data**

\*Insert sentencing data here, or refer to attached sentencing data\*

**Aggravating Factors**

The State considered the following aggravating factors:

- List

**Mitigating Factors**

The State considered the following mitigating factors:

- List

**Offer Deadline**

This offer expires on [redacted], 202[redacted] but may be revoked by the State at any time prior to acceptance. You may trigger revocation by filing a substantive motion or scheduling a deposition. Your client may trigger revocation by engaging in further criminal behavior. If you wish to ask a clarifying question or make a counter-proposal, please do so such that the entire exchange can occur prior to the deadline.

**OFFER:**

- Defendant shall pay restitution for uninsured losses.
- Count 1,
- Count 2,

Resulting in a controlling sentence of:

Yours,  
/s/ DSA