

## Sentence options for first felony drug offender convicted of PL 220.39, a class B felony :

**State prison:** For a [first felony drug offender](#), determinate sentence of at least 1 and not to exceed 9 years, in whole or half year increments ([PL 70.70\(2\)\(a\)\(i\)](#), [60.04\(3\)](#)), plus a period of post-release supervision of between 1 and 2 years ([PL 70.45](#)). Court must pronounce term of post-release supervision as part of sentence ([PL 70.45\(1\) as amended by L.2008 c.141 effective 6/30/08](#)).

Court may direct that sentence be executed as sentence of parole supervision if defendant eligible, ([CPL 410.91](#), [PL 70.70\(2\)\(d\)](#), (3)(d)). Court to make specified findings pursuant to [CPL 410.91\(3\)](#).

Defendant may be or may become eligible for [shock incarceration](#) if under 50, between 16 and 50 when crime committed, never previously sentenced to prison for a violent felony conviction and eligible for conditional release within 3 years (Corr Law [865\(1\)](#)). Upon motion of defendant, court may *order* that DOCS enroll defendant in shock incarceration program, provided that defendant is or [will become](#) an [eligible inmate](#) ([PL 60.04\(7\)](#), Corr Law [865\(1\),\(2\)](#), [867\(2-a\) as amended by L.2009 c.56 effective 4/7/09](#)).

On motion of defendant, court may in its discretion order defendant enrolled in DOCS CASAT program, provided defendant will satisfy the [statutory eligibility criteria](#) for participation in such treatment program ([PL 60.04\(6\)](#)).

**Local jail time:** Definite sentence of imprisonment for up to 1 year; intermittent imprisonment not authorized ([PL 60.04\(3\)](#) [70.70\(2\)\(c\)](#), *as amended by L.2009 c.56 effective 4/7/09*, [85.00\(2\)\(a\)](#)).

**Split sentence:** Not available ([PL 60.04\(3\)](#), [70.70\(2\)](#)).

**Revocable:** Term of 3, 4 or 5 years probation ([PL 65.00\(1\)\(a\)](#), (3)(a)(i)).

**Unconditional:** Unconditional discharge available if and only if a revocable conditional discharge is available (*see above*) ([PL 65.20\(1\)](#)).

**Fine:** A fine alone is not an available sentence for any article 220 drug felony ([PL 60.01\(3\)\(b\)](#)). However, in *addition* to any sentence of imprisonment, a fine may be imposed not exceeding higher of \$30,000 ([PL 80.00\(1\)\(c\)\(iii\)](#)) or double defendant's gain from the offense ([PL 60.04\(4\)](#), [80.00\(1\)\(b\)](#)).

**Alternative Domestic Violence** Domestic violence exception not excluded by nature of offense. Defendant's status potentially qualifies for alternative sentence under domestic violence exception ([PL 60.12\(1\)](#)). No alternate sentence specified for offender

**Survivors Justice Act Sentence:** convicted of this offense (*see* [PL 60.12](#), as amended by L.2019 c.31 effective 05/14/19). Retroactive relief may be available to eligible defendant serving sentence of eight years or more (*see* CPL [440.47](#)).

**Additions:** Upon conviction of *any* Penal Law felony, defendant required to provide DNA sample for state DNA database pursuant to Executive Law [995\(7\)](#). DNA databank fee of \$50 ([PL 60.35\(1\)\(a\)\(v\)](#) (*effective* 5/15/03)).

Offense is not a [Son of Sam Law specified crime](#), since contained in an article specifically exempted (Exec Law [632-a\(1\)\(e\)\(ii\)](#)).

Optional additions of restitution or order of protection ([CPL 530.13\(4\)](#), [PL 60.27](#)); mandatory surcharge and crime victim assistance fee of \$325 ([PL 60.35\(1\)\(a\)](#) as amended by L.2008 c.56 Part DD effective 7/1/08) ; no surcharge or fee if restitution has been made ([PL 60.35\(6\)](#); *People v Quinones*, 95 NY2d 349 [11/16/2000]).

Upon defendant's conviction for this felony, court pursuant to CPL [370.25](#) must inquire as to and order the immediate surrender of all firearms, rifles and shotguns owned or possessed by defendant (PL 265.20[\[a\]\[1\]\[f\]](#), 400.05[\[6\]](#)), immediately notify local law enforcement and NYSP of such action, and direct the authority receiving such weapons to immediately notify the court of their surrender.

Where court imposes revocable sentence or any sentence other than state prison, upon application court prior to sentence shall determine fitness of an eligible offender for certificate of relief from disabilities ([Corrections Law 702\[1\]](#), as amended by L.2011 c.488). [Eligible offender](#) is a person who has been convicted of a crime or of an offense, but who has not been convicted more than once of a felony ([Corrections Law 700\[1\]\[a\]](#)).

CPL [380.55](#) permits trial court at sentencing to entertain application by indigent defendant for poor person status on appeal (L.2016 c.459 *effective* 11/25/16).