

1 **Rule 11. Pleas.**

2 (a) **Right to Counsel.** Upon arraignment, except for an infraction, a defendant ~~shall~~must
3 be represented by counsel, unless the defendant waives counsel in open court. The
4 defendant ~~shall~~must not be required to plead until the defendant has had a
5 reasonable time to confer with counsel.

6 (b) **Types of pleas.** A defendant may plead not guilty, guilty, no contest, not guilty by
7 reason of insanity, or guilty and mentally ill. A defendant may plead in the
8 alternative not guilty or not guilty by reason of insanity. If a defendant refuses to
9 plead or if a defendant corporation fails to appear, the court ~~shall~~will enter a plea of
10 not guilty.

11 (c) **No contest plea.** A defendant may plead no contest only with the consent of the
12 court.

13 (d) **Not guilty plea.** When a defendant enters a plea of not guilty, the case ~~shall~~
14 ~~forthwith~~will be set for trial. A defendant unable to make bail ~~shall~~must be given a
15 preference for an early trial. In cases other than felonies the court ~~shall~~will advise
16 the defendant, or counsel, of the requirements for making a written demand for a
17 jury trial.

18 (e) **Guilty plea.** The court may refuse to accept a plea of guilty, no contest or guilty and
19 mentally ill, and **may** not accept the plea until the court has found:

20 (e)(1) if the defendant is not represented by counsel, he or she has knowingly
21 waived the right to counsel and does not desire counsel;

22 (e)(2) the plea is voluntarily made;

23 (e)(3) the defendant knows of the right to the presumption of innocence, the right
24 against compulsory self-incrimination, the right to a speedy public trial
25 before an impartial jury, the right to confront and cross-examine in open
26 court the prosecution witnesses, the right to compel the attendance of
27 defense witnesses, and that by entering the plea, these rights are waived;

28 (e)(4)(A) the **defendant** understands the nature and elements of the offense to
29 which the plea is entered, that upon trial the prosecution would have

30 the burden of proving each of those elements beyond a reasonable
31 doubt, and that the plea is an admission of all those elements;

32 (e)(4)(B) there is a factual basis for the plea. A factual basis is sufficient if it
33 establishes **that** the charged crime was actually committed by the
34 **defendant** or, if the defendant refuses or is otherwise unable to admit
35 culpability, that the prosecution has sufficient evidence to establish a
36 substantial risk of conviction;

37 (e)(5) the defendant knows the minimum and maximum sentence, and if
38 applicable, the **minimum** mandatory nature of the minimum sentence, that
39 may be imposed for each offense to which a plea is entered, including the
40 possibility of the imposition of consecutive sentences;

41 (e)(6) if the tendered plea is a result of a prior plea discussion and plea
42 agreement, and if so, what agreement has been reached;

43 (e)(7) the **defendant** has been advised of the time limits for filing any motion to
44 withdraw the plea; and

45 (e)(8) the **defendant** has been advised that the right of appeal is limited.

46 These findings may be based on questioning of the defendant on the record or, if
47 used, a written statement reciting these factors after the court has established that
48 the defendant has read, understood, and acknowledged the contents of the
49 statement. If the defendant cannot understand the English language, it will be
50 sufficient that the statement has been read or translated to the defendant.

51 Unless specifically required by statute or rule, a court is not required to inquire into
52 or advise concerning any collateral consequences of a plea.

53 (f) **Motion to withdraw plea.** Failure to advise the defendant of the time limits for filing
54 any motion to withdraw a plea of guilty, no contest or guilty and mentally ill is not a
55 ground for setting the plea aside, but may be the ground for extending the time to
56 make a motion under Utah Code § 77-13-6.

57 (g) **Plea in domestic violence offense.** If the defendant pleads guilty, no contest, or
58 guilty and mentally ill to a misdemeanor crime of domestic violence, as defined in

59 Utah Code § 77-36-1, the court ~~shall~~will advise the defendant orally or in writing
60 that, if the case meets the criteria of 18 U.S.C. § 921(a)(33) or Utah Code § 76-10-503
61 then pursuant to federal law or state law, it is unlawful for the defendant to possess,
62 receive or transport any firearm or ammunition. The failure to advise does not
63 render the plea invalid or form the basis for withdrawal of the plea.

(h) **Plea recommendations.**

64 (h)(1) If it appears that the prosecuting attorney or any other party has agreed to
65 request or **recommend** the acceptance of a plea to a lesser included offense,
66 or the dismissal of other charges, the agreement ~~shall~~must be approved or
67 rejected by the court.

68 (h)(2) If **sentencing** recommendations are allowed by the court, the court ~~shall~~
69 will advise the defendant personally that any recommendation as to
70 sentence is not binding on the court.

(i) **Plea agreements.**

71 (i)(1) The **judge** ~~shall~~will not participate in plea discussions prior to any plea
72 agreement being made by the prosecuting attorney.

73 (i)(2) When a tentative plea agreement has been reached, the judge, upon request
74 of the parties, **may** permit the disclosure of the tentative agreement and the
75 reasons for it, in advance of the time for tender of the plea. The judge may
76 then indicate to the prosecuting attorney and defense counsel whether the
77 proposed disposition will be approved.

78 (i)(3) If the judge then decides that final disposition should not be in conformity
79 with the plea **agreement**, the judge ~~shall~~must advise the ~~defendant~~parties
80 as to the nature of the divergence from the plea agreement and then call
81 upon the ~~defendant~~parties to either affirm or withdraw from the plea
82 agreement.

83 (j) **Conditional plea.** With approval of the court and the consent of the prosecution, a
84 defendant may enter a conditional plea of guilty, guilty and mentally ill, or no
85 contest, reserving in the record the right, on appeal from the judgment, to a review

86 of the adverse determination of any specified pre-trial motion. A defendant who
87 prevails on appeal ~~shall~~will be allowed to withdraw the plea.

88 (k) **Guilty and mentally ill.** When a defendant tenders a plea of guilty and mentally ill,
89 in addition to **the** other requirements of this rule, the court ~~shall~~will hold a hearing
90 within a reasonable time to determine if the defendant is mentally ill in accordance
91 with Utah Code § 77-16a-103.

92 (l) **Strict compliance not necessary.** Compliance with this rule ~~shall~~will be determined
93 by **examining** the record as a whole. Any variance from ~~the~~ procedures required by
94 this rule which does not affect substantial rights ~~shall~~will be disregarded. Failure to
95 comply with this rule is not, by itself, sufficient grounds for a collateral attack on a
96 guilty plea.

97 *Effective May 1, 2022*