

1 Rule 11. Pleas

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3 ~~Effective: 5/1/2022~~

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

8 (b) **Types of pleas.** A defendant may plead not guilty, guilty, no contest, not guilty by  
9 reason of insanity, or guilty ~~with a mental condition at the time of the offense, and~~  
10 ~~mentally ill.~~ A defendant may plead in the alternative not guilty or not guilty by reason  
11 of insanity. If a defendant refuses to plead or if a defendant corporation fails to appear,  
12 the court will enter a plea of not guilty.

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

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

19 (e) **Guilty plea.** The court may refuse to accept a plea of guilty, no contest, or guilty  
20 ~~with a mental condition at the time of the offense, and mentally ill,~~ and may not accept  
21 the plea until the court has found:

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

24 ~~(e)~~(2) the plea is voluntarily made;

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

30 ~~(e)~~(4)(A) the defendant understands the nature and elements of the offense to which the  
31 plea is entered, that upon trial the prosecution would have the burden of proving each

32 of those elements beyond a reasonable doubt, and that the plea is an admission of all  
33 those elements; and

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

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

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

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

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

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

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

54 **(f) Motion to withdraw plea.**

55 (1) A defendant may withdraw a plea of not guilty at any time before conviction.

56 (2) A defendant must make a motion to withdraw a plea of guilty, no contest, or  
57 guilty with a mental condition at the time of the offense before the sentence is  
58 announced. The court may not announce the defendant's sentence unless the  
59 motion to withdraw the plea is denied.

60 (3) A defendant must make a motion to withdraw a plea in abeyance within 30  
61 days after the day on which the court accepts the defendant's plea of guilty or no  
62 contest.

63 (4) If a motion to withdraw a plea is not made within the time period described  
64 in this paragraph (f), the defendant may challenge the plea in accordance with  
65 the preservation rule, or an established exception to the preservation rule, in a  
66 direct appeal.

67 (5) Failure to advise the defendant of the time limits for filing any motion to  
68 withdraw a plea ~~of guilty, no contest or guilty and mentally ill~~ is not a ground  
69 for setting the plea aside, but may be the ground for extending the time to make  
70 a motion under ~~Utah Code § 77-13-6~~ this paragraph (f).

71 (g) **Plea in domestic violence offense.** If the defendant pleads guilty, no contest, or  
72 guilty ~~and mentally ill~~ with a mental condition at the time of the offense to a  
73 misdemeanor crime of domestic violence, as defined in Utah Code Section § 77-36-1, the  
74 court will advise the defendant orally or in writing that, if the case meets the criteria of  
75 18 U.S.C. Sec. § 921(a)(33) or Utah Code Section § 76-10-503 then pursuant to federal law  
76 or state law, it is unlawful for the defendant to possess, receive or transport any firearm  
77 or ammunition. The failure to advise does not render the plea invalid or form the basis  
78 for withdrawal of the plea.

79 (h) **Plea recommendations.**

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

83 ~~(h)~~(2) If sentencing recommendations are allowed by the court, the court will advise the  
84 defendant personally that any recommendation as to sentence is not binding on the  
85 court.

86 (i) **Plea agreements.**

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

89 ~~(i)~~(2) When a tentative plea agreement has been reached, the judge, upon request of the  
90 parties, may permit the disclosure of the tentative agreement and the reasons for it, in  
91 advance of the time for tender of the plea. The judge may then indicate to the  
92 prosecuting attorney and defense counsel whether the proposed disposition will be  
93 approved.

94 ~~(i)~~(3) If the judge then decides that final disposition should not be in conformity with  
95 the plea agreement, the judge must advise the parties as to the nature of the divergence

96 from the plea agreement and then call upon the parties to either affirm or withdraw  
97 from the plea agreement.

98 (j) **Conditional plea.** With approval of the court and the consent of the prosecution, a  
99 defendant may enter a conditional plea of guilty, guilty with a mental condition at the  
100 time of the offense~~and mentally ill~~, or no contest, reserving in the record the right, on  
101 appeal from the judgment, to a review of the adverse determination of any specified  
102 pre-trial motion. A defendant who prevails on appeal will be allowed to withdraw the  
103 plea.

104 (k) **Guilty** with a mental condition at the time of the offense~~and mentally ill~~.

105 When a defendant tenders a plea of guilty with a mental condition at the time of the  
106 offense~~and mentally ill~~, in addition to the other requirements of this rule, the court will  
107 hold a hearing within a reasonable time to determine if the defendant ~~is mentally ill~~had  
108 a mental condition in accordance with Utah Code Section§ 77-16a-103.

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

113 As provided in Utah Constitution, Article VII, Section 4, this rule takes effect upon a  
114 two-thirds vote of all members elected to each house.