

Guilty and No Contest Plea Checklist for Felonies¹

NOTE: A district judge has the authority to accept a felony plea, and *must* take a plea to a felony as provided by court rule if a plea agreement is reached between the parties. [MCL 766.4\(3\)](#); see also [MCR 6.111\(A\)](#). A district court *magistrate* may not accept a felony plea.² For a chart outlining the differences in procedures before and after January 1, 2015, as a result of statutory reforms concerning probable cause conferences, preliminary examinations, and felony pleas, see [SCAO Memorandum](#), July 23, 2014.

- Ensure that a verbatim record is made of the plea proceeding. [MCR 6.302\(F\)](#).
- Do not accept a plea of guilty or no contest unless convinced that the plea is understanding, voluntary, and accurate. Before accepting a plea of guilty or no contest, place defendant under oath and personally carry out [MCR 6.302\(B\)-\(E\)](#) (see below). [MCR 6.302\(A\)](#).
- Identify case number and parties for the record.
- Speaking directly to defendant, advise him/her of the following and determine that he/she understands:
 - The name of the offense to which he/she is pleading. The court is not obligated to explain the elements of the offense, or possible defenses. [MCR 6.302\(B\)\(1\)](#).
 - The maximum possible prison sentence for the offense, whether the law permits or requires consecutive sentences if applicable, and any mandatory minimum sentence

¹ For more detailed information on this topic, see the Michigan Judicial Institute's [Criminal Proceedings Benchbook, Vol. 1](#), Chapter 6.

² See [MCL 766.1](#); [MCL 600.8511](#).

required by law, including a requirement for mandatory lifetime electronic monitoring under [MCL 750.520b](#) or [MCL 750.520c](#). [MCR 6.302\(B\)\(2\)](#).

- If the plea is accepted, he/she will not have a trial of any kind, and so gives up the rights he/she would have at trial, including the right:
 - To be tried by a jury;
 - To be presumed innocent until proved guilty;
 - To have the prosecutor prove beyond a reasonable doubt that he/she is guilty;
 - To have the witnesses against him/her appear at trial;
 - To question the witnesses against him/her;
 - To have the court order any witnesses he/she has for the defense to appear at the trial;
 - To remain silent during trial;
 - To not have that silence used against him/her; and
 - To testify at the trial if he/she wants to testify. [MCR 6.302\(B\)\(3\)](#).³
- If the plea is accepted, he/she will be giving up any claim that the plea was the result of promises or threats that were not disclosed to the court at the plea proceeding, or that it was not his/her own choice to enter the plea. [MCR 6.302\(B\)\(4\)](#).
- If the plea is accepted, he/she may be giving up the right to appeal issues that would otherwise be appealable if she or he were convicted at trial; any appeal from the conviction and sentence pursuant to the plea will be by application for leave to appeal and not by right. [MCR 6.302\(B\)\(5\)](#).⁴

³The requirements of [MCR 6.302\(B\)\(3\)](#) may be satisfied by a writing on a form approved by SCAO. If a court uses a writing, it must address defendant and obtain from him/her orally on the record a statement that the rights were read and understood and a waiver of those rights. The waiver may be obtained without repeating the individual rights. [MCR 6.302\(B\)](#). See [SCAO Form MC 291, Advice of Rights \(Felony Plea\)](#); [SCAO Form DC 213, Advice of Rights and Plea Information](#).

⁴The requirements of [MCR 6.302\(B\)\(5\)](#) may be satisfied by a writing on a form approved by SCAO. If a court uses a writing, it must address defendant and obtain from him/her orally on the record a statement that the rights were read and understood and a waiver of those rights. The waiver may be obtained without repeating the individual rights. [MCR 6.302\(B\)](#). See [SCAO Form MC 291, Advice of Rights \(Felony Plea\)](#); [SCAO Form DC 213, Advice of Rights and Plea Information](#).

- Ask the prosecutor and defendant's lawyer whether they have made a plea agreement. [MCR 6.302\(C\)\(1\)](#).
 - If they have made a plea agreement, which may include an agreement to a sentence to a specific term or within a specific range, the agreement must be stated on the record or reduced to writing and signed by the parties. The parties may memorialize their agreement on a form substantially approved by SCAO. Ensure that the written agreement is made part of the case file. [MCR 6.302\(C\)\(1\)](#). See [SCAO Form MC 414, Plea Agreement](#).
- If the court states during a plea hearing that it will sentence defendant to a specified term or within a specified range, it must:
 - Inform defendant that the final sentencing guidelines range may differ from the original preliminary estimate;
 - Advise defendant regarding their right to withdraw the plea pursuant to [MCR 6.310\(B\)](#) if the final sentencing guidelines range as determined at sentencing is different; and
 - Provide a numerically quantifiable sentence term or range when providing the preliminary estimate. A quantifiable sentence range includes language such as "lower/upper half" or "lower/upper quarter." [MCR 6.302\(C\)\(2\)](#).
- If there is a plea agreement, ask the prosecutor or defendant's lawyer what the terms of the agreement are and confirm the terms of the agreement with the other lawyer and defendant. [MCR 6.302\(C\)\(3\)](#).
- If there is a plea agreement and its terms provide for defendant's plea to be made in exchange for a sentence to a specified term or within a specified range or a prosecutorial sentence recommendation, determine whether to:
 - Reject the agreement;
 - Accept the agreement after having considered the presentence report, in which event defendant must be sentenced to a specified term or within a specified range as agreed to.
 - Accept the agreement without having considered the presentence report.
 - Take the plea under advisement. [MCR 6.302\(C\)\(4\)](#).

- If the plea agreement is accepted without having considered the presentence report or the plea is taken under advisement, explain to defendant that the court is not bound to follow an agreement to a sentence for a specified term or within a specified range or a recommendation agreed to by the prosecutor, and that if the court chooses not to follow an agreement to a sentence for a specified term or within a specified range, he/she will be allowed to withdraw from the plea agreement. A judge's decision not to follow the sentence recommendation does not entitle him/her to withdraw his/her plea. [MCR 6.302\(C\)\(4\)](#).
- Ask defendant:
 - (If there is no plea agreement) whether anyone has promised him/her anything, OR (if there is a plea agreement) whether anyone has promised anything beyond what is in the plea agreement;
 - Whether anyone has threatened him/her; and
 - Whether it is his/her own choice to plead guilty. [MCR 6.302\(C\)\(5\)](#).
 - Package-deal plea offer.** [NOTE: If the plea is part of a package-deal plea offer where the prosecutor requires that *multiple* defendants all agree to the plea offer in order for any *single* defendant to receive the benefit of the plea, due-process concerns about voluntariness and [MCR 6.302\(A\)](#) "may require a consideration of whether a package-deal plea offer is unduly coercive under the facts of a specific case [if] a defendant indicates that such a plea offer has a bearing on the defendant's decision to plead guilty."⁵ However, the court is not required at the plea colloquy to "sua sponte engage in a special inquiry during the plea hearing [to determine] whether the mere existence of a package-deal plea offer renders the plea involuntary."⁶]
- Before accepting defendant's plea in a case involving [MCL 257.625](#) or an ordinance substantially corresponding to [MCL 257.625\(1\)](#), [MCL 257.625\(2\)](#), [MCL 257.625\(3\)](#), [MCL 257.625\(6\)](#), or [MCL 257.625\(8\)](#), advise defendant of maximum possible sentence/fine, and inform defendant that maximum possible license sanctions are based on master driving record maintained by Secretary of State. [MCL 257.625b\(4\)](#).

⁵*People v Samuels*, ___ Mich ___, ___ (2024) (adopting the totality-of-the-circumstances test set forth by the California Supreme Court in *In re Ibarra*, 34 Cal 3d 277 (1983), to determine whether a package-deal plea offer has rendered a plea involuntary).

⁶*Samuels*, ___ Mich at ___.

- If a person is charged with a violation of [MCL 257.625\(1\)](#), [MCL 257.625\(2\)](#), [MCL 257.625\(3\)](#), [MCL 257.625\(5\)](#), [MCL 257.625\(7\)](#), or [MCL 257.625\(8\)](#), or [MCL 257.625m](#), do not permit defendant to enter a plea of guilty or no contest to a charge of violating [MCL 257.625\(6\)](#) in exchange for dismissal of the original charge. [MCL 257.625\(16\)](#). [MCL 257.625\(16\)](#) does not prohibit the court from dismissing the charge upon the prosecuting attorney's motion. [MCL 257.625\(16\)](#).
- If defendant pleads guilty, question him/her to establish support for a finding that he/she is guilty of the offense charged or to which he/she is pleading. [MCR 6.302\(D\)\(1\)](#).
- If defendant pleads no contest, do NOT question him/her about participation in the crime.
 - State why a plea of no contest is appropriate; and
 - Hold a hearing, unless there has been one, that establishes support for a finding that he/she is guilty of the offense charged or the offense to which he/she is pleading. [MCR 6.302\(D\)\(2\)](#).
- On completing the colloquy with defendant, ask the prosecutor and defendant's lawyer whether either is aware of any promises, threats, or inducements other than those already disclosed on the record, and whether the court has complied with [MCR 6.302\(B\)-\(D\)](#). If it appears that the court has failed to comply with [MCR 6.302\(B\)-\(D\)](#), do not accept defendant's plea until the deficiency is corrected. [MCR 6.302\(E\)\(1\)](#).
- Advise the defendant on the record and in writing⁷ that "the court will not be bound by any sentencing agreement or evaluation" if the defendant engages in misconduct after plea acceptance but before sentencing. [MCR 6.302\(E\)\(2\)](#). Misconduct includes, but is not limited to, failing to appear for sentencing, violating a bond condition or violating a sentencing or plea agreement, or failing to obey any other court order. [MCR 6.302\(E\)\(2\)](#); [MCR 6.310\(B\)\(3\)](#).
- If the plea is being taken by the district court under [MCL 766.4\(3\)](#), verify that a circuit court judge has been assigned to the case and that the identity of the circuit court judge is known to the parties. [MCL 766.4\(3\)](#).
 - Plea agreement.** [NOTE: A district court judge accepting a plea under [MCL 766.4\(3\)](#) should not accept a felony plea

⁷See [SCAO Form MC 291](#), *Advice of Rights (Felony Plea)*.

that is contingent upon a sentencing agreement or *Cobbs*⁸ proposal, unless there is an agreement between the circuit and district court judges on how this is to be done. If no such procedure is in place, the case should be bound over to circuit court and the assigned circuit court judge should consider any pleas pursuant to *Cobbs* or *Killebrew*⁹.]

- Set or continue bail. See [MCR 6.106\(E\)](#).
- Advise or remind defendant of any conditions attendant to his/her release. [MCR 6.106\(D\)](#).
- Set sentencing date or, if plea was taken in district court, request circuit court to set sentencing date.

⁸ *People v Cobbs*, 443 Mich 276 (1993).

⁹ *People v Killebrew*, 416 Mich 189 (1982).