

Vermont Rules of Criminal Procedure

Rule 11. Pleas

(a) **Alternatives.**

- (1) *In General.* A defendant may plead not guilty, guilty or nolo contendere. If a defendant refuses to plead or a defendant corporation fails to appear, the court shall enter a plea of not guilty.
- (2) *Conditional Pleas.* With the approval of the court and the consent of the state, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right, on appeal from the judgment, to review of the adverse determination of any specified pretrial motion. If the defendant prevails on appeal, he shall be allowed to withdraw his plea.

(b) **Nolo Contendere.** A defendant may plead nolo contendere only with the consent of the court. Such a plea shall be accepted by the court only after due consideration of the views of the parties and the effective administration of justice. A plea of nolo contendere shall have the same effect as a plea of guilty, except that it shall be admissible in evidence against the defendant in any criminal or civil proceeding only to the extent provided in paragraph (5) of subdivision (e) of this rule. A conviction based upon a plea of nolo contendere shall be admissible in evidence for all purposes for which a conviction based upon a plea of guilty is admissible.

(c) **Advice to Defendant.** The court shall not accept a plea of guilty or nolo contendere without first, by addressing the defendant personally in open court, informing the defendant of and determining that the defendant understands the following:

- (1) the nature of the charge to which the plea is offered;
- (2) the mandatory minimum penalty, if any, and the maximum possible penalty provided by law for the offense to which the plea is offered and, when applicable, that the court may also order the defendant to make restitution to any victim of the offense;
- (3) that the defendant has the right to plead not guilty, or to persist in that plea if it has already been made;
- (4) that if the defendant's plea of guilty or nolo contendere is accepted by the court there will not be a further trial of any kind, so that by pleading the defendant waives the privilege against self-incrimination, the right to trial by jury or otherwise, and the right to be confronted with the witnesses against the defendant;
- (5) if there is a plea agreement and the court has not accepted it pursuant to subdivision (e)(3) of this rule, that the court is not limited, within the maximum permissible penalty, in the sentence it may impose;
- (6) if the court intends to question the defendant under oath, on the record, and in the presence of counsel about the offense to which the defendant has pleaded, that the defendant's answers may later be used against the defendant in a prosecution for perjury or false statement; and

(7) if the defendant is not a citizen of the United States, admitting to facts sufficient to warrant a finding of guilt or pleading guilty or nolo contendere to a crime may have the consequences of deportation or denial of United States citizenship.

(d) **Insuring That the Plea Is Voluntary.** The court shall not accept a plea of guilty or nolo contendere without first, by addressing the defendant personally in open court, determining that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement. The court shall also inquire as to whether the defendant's willingness to plead guilty or nolo contendere results from prior discussions between the prosecuting attorney and the defendant or his attorney.

(e) **Plea Agreement Procedure.**

(1) *In General.* The prosecuting attorney and the attorney for the defendant, or the defendant when acting pro se, may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty or nolo contendere to a charged offense or to a lesser or related offense, the prosecuting attorney will move for dismissal of other charges, or will recommend or not oppose the imposition of a particular sentence, or will do both. The court shall not participate in any such discussions, unless the proceedings are taken down by a court reporter or recording equipment.

(2) *Notice of Such Agreement.* If a plea agreement has been reached by the parties which contemplates entry of a plea of guilty or nolo contendere in the expectation that a specific sentence will be imposed or that other charges before the court will be dismissed, the court shall require the disclosure of the agreement in open court at the time the plea is offered. In a felony case, the prosecuting attorney shall also disclose the reasons for entry into the plea agreement. Thereupon the court, before entry of the plea, may accept or reject the agreement, or defer its decision as to acceptance or rejection until there has been an opportunity to consider the presentence report. The plea agreement shall not be binding upon the court nor shall it limit the court in the judgment and sentence to be imposed unless the court accepts the plea agreement under subdivision (e)(3) of this rule.

(3) *Acceptance of Plea Agreement.* If the court accepts the plea agreement, the court shall inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement or a less onerous disposition.

(4) *Rejection of Plea Agreement.* If the court rejects the plea agreement or defers decision upon it, the court shall inform the parties of this fact, advise the defendant personally in open court that the court is or may not be bound by the plea agreement, pursuant to Rule 32(d) afford a defendant who has already pleaded the opportunity to then withdraw his plea, and advise the defendant that if he persists in his plea the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

(5) *Inadmissibility of Pleas, Plea Discussions, and Related Statements.* Except as otherwise provided in this paragraph, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:

(A) a plea of guilty which was later withdrawn;

(B) a plea of nolo contendere;

(C) any statement made in the course of any proceedings under this rule regarding either of the foregoing pleas;

(D) any statement made in the course of plea discussions with an attorney for the prosecution which do not result in a plea of guilty or which result in a plea of guilty later withdrawn. However, such a statement is admissible (i) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it, or (ii) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.

(f) **Determining Accuracy of Plea.** Notwithstanding the acceptance of a plea of guilty, the court should not enter a judgment upon such plea without making such inquiry as shall satisfy it that there is a factual basis for the plea.

(g) **Record of Proceedings.** A verbatim record of the proceedings at which the defendant enters a plea shall be made and, if there is a plea of guilty or nolo contendere, the record shall include, without limitation, the court's advice to the defendant, the inquiry into the voluntariness of the plea including any plea agreement, and the inquiry into the accuracy of a guilty plea.

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