

GUILTY PLEAS

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PLEA BARGAINS

At some point during a criminal prosecution, a defendant may be offered a plea bargain.

This means that the prosecuting attorney is willing to make some kind of “deal” in the case and settle it without completing a trial. The way plea bargains usually work is that if the defendant agrees to waive their right to a trial and plead guilty to one or some of the counts against them, the prosecutor will offer a more lenient sentence than the defendant would probably have received had they gone to trial and been convicted of the more serious offenses charged. Often, the parties agree to the sentence in advance, but sometimes the judge decides what the defendant’s sentence is going to be.

Deciding whether to accept a plea can be extremely difficult and requires careful consideration. A plea and conviction can have complicated and long-lasting consequences, even beyond the sentence itself. For example, plea bargains dramatically limit a defendant’s rights to appeal. Any conviction, whether the result of a plea or a trial, may impact other aspects of a defendant’s life, such as custody rights, immigration status, or access to certain jobs and government benefits. On the other hand, accepting a plea bargain may be in the defendant’s best interests, particularly if the risk of conviction at trial is high, and/or if a conviction after trial would expose the defendant to a high likelihood of significant jail or prison time.

If you are a defendant deciding whether to take a plea bargain, you may have lots of questions. You may find that there are many well-intentioned people (friends, family, advocates), who are advising you about what to do. This can create a lot of confusion and anxiety, particularly if you are getting different advice from different people. It’s important to remember that the only person who can make the decision to accept or reject a plea bargain is you – and to make the most educated and informed decision possible, you will want to get as much information and advice as possible from your defense attorney.



It is entirely reasonable and important to ask your attorney a lot of questions when considering a plea. Even if you feel shy or afraid, it is a good idea to ask any questions you may have since taking a plea is a major decision that affects your rights.

Some questions to ask might include:

- What sentence will you receive under the plea agreement?
- If the sentence is not negotiated before the plea, what is the potential sentencing range you face if you take the plea? Realistically, what does that mean in terms of prison time, if any?
- How does the plea offer compare to what you would face at trial if convicted of the crime(s) charged?
- If you already have a record, how will it impact the plea bargain, if at all?
- Is there a “mandatory minimum” sentence involved if convicted at trial of any of the crimes charged? Would the plea involve any mandatory sentence?
- How strong a case does your attorney think you have if you were to go to trial? Are there any legal defenses available? If so, what are they? What, if any, are the weak points of your case? What are the strengths?
- What are the strongest aspects of the prosecution’s case? What are the weakest? What is your attorney’s sense of the prosecutor? The potential jury pool?
- Is your attorney familiar with this judge? If so, how has this judge sentenced others for similar crimes (both after a trial or a plea)? Are there things about your case that are different, for better or for worse, from these other cases?
- Does your attorney have an opinion on what the likely outcome would be if the case goes to trial? What do they see as the main risks of going to trial?
- If the plea involves incarceration, how soon will you be eligible for parole? · If a plea is accepted, will you have any appeal rights remaining?
- If sentenced to jail or prison, where will you serve out your time? Is there any chance of negotiating with the prosecutor about issues such as where you will serve out your sentence?
- Is there anything that can be done to get a better offer from the prosecutor? Are there any circumstances in which the prosecutor will make an offer that doesn’t result in a conviction?

- If you are not a U.S. citizen, will accepting a plea bargain affect your ability to remain in the country? You may want to consult with an immigration attorney to get additional information about the potential immigration consequences of a having a conviction.
- How will a plea impact your rights to public benefits, public housing, employment opportunities, licensure, voting, and current or future child custody actions?
- How much time do you have to decide about the plea offer – has the prosecutor imposed a firm deadline?

Even though there may be some (or even a lot of) negative consequences that may result if you accept a plea, it is a good idea for you to seriously consider and evaluate any plea that is offered. Despite the potential downsides that you may face by accepting a plea bargain, plea bargains are sometimes the best option. For some people, taking a plea bargain is in their best interests. Each case and situation is different; therefore, each case requires an individualized assessment in close consultation with your defense attorney.

It is very important to understand all of the consequences of a plea before going in front of a judge.

The judge is the one with the authority to formally accept the plea agreement. The judge will likely ask several questions to make sure that you know what you are doing and to determine if your acceptance of the plea was “knowing and voluntary.”

If you change your mind about your plea, or if it did not turn out the way it was explained to you, consult with your attorney immediately. If there are any options remaining to you, such as the option to withdraw your plea, the deadlines for doing so are normally extremely strict.

Note to family members and advocates: If you know someone who is deciding whether to accept a plea bargain, you may have some strong feelings about what they should do. However, sometimes the legal complexities of both the crime charged and any potential defense a defendant might have is not readily apparent. Every defendant’s case is different, and a decision to accept or reject a plea must be based on the specific facts of the case and applicable law involved. Therefore, it is critical that the defendant make their decision in close and careful consultation with their defense attorney, who is in the best position to assess the case. Ultimately, this decision is one that only the defendant can make.

If you have any questions or would like to discuss the plea bargain process, please contact NDCCS at defensecenter@bwjp.org. Please be advised that we cannot offer legal advice.

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