

# 14.1: Arraignment Proceedings Where Jail May Be Imposed

## Checklist

(Use in all cases involving DWI, Reckless Driving, and Driving on a Suspended or Revoked License; all criminal cases with a mandatory jail sentence; and all cases where the judge has reserved the right to impose a jail sentence.)

- \_\_\_\_\_ 1. Call the case (by saying the name of the case, the case number, and the date).
- \_\_\_\_\_ 2. Ask the defendant to stand.
- \_\_\_\_\_ 3. State the defendant's name as it appears in the court file and ask the defendant if it is accurate. (If necessary, amend the court documents.) Have the court clerk confirm the defendant's address privately, but do not read the address in open court.
- \_\_\_\_\_ 4. Inform the defendant of his or her constitutional rights:
  - \_\_\_\_\_ The right to bail if the defendant was arrested and remains in custody;
  - \_\_\_\_\_ The right to see, hear, question, and cross-examine the witnesses who testify against the defendant at trial;
  - \_\_\_\_\_ The right to call witnesses to testify for the defense and to have them subpoenaed and required to appear, at no cost to the defendant;
  - \_\_\_\_\_ The right to assistance of counsel at every stage of the proceedings;
  - \_\_\_\_\_ The right to representation by a court-appointed attorney if the defendant is indigent;
  - \_\_\_\_\_ The right to remain silent;
  - \_\_\_\_\_ That any statement made by the defendant may be used against him or her;
  - \_\_\_\_\_ The right to testify at trial; and
  - \_\_\_\_\_ That if the defendant testifies at trial, he or she will be subject to cross-examination.
- \_\_\_\_\_ 5. Verify that the defendant understands these rights.

- \_\_\_\_\_ 6. If the defendant is not represented by counsel, can afford counsel, and wants an attorney, reschedule arraignment for another date within a reasonable amount of time (such as one week) to allow the defendant time to hire an attorney.
- \_\_\_\_\_ 7. If the defendant wants an attorney, but claims that he or she cannot afford one, determine whether the defendant is indigent.
- \_\_\_\_\_ If yes, appoint counsel.
- \_\_\_\_\_ If no, the defendant is not entitled to appointed counsel.
- \_\_\_\_\_ 8. If the defendant wants to appear pro se (without an attorney), determine whether the defendant is knowingly, voluntarily, and intelligently waiving counsel.
- \_\_\_\_\_ Inform the defendant of the right to counsel and of the possible disadvantages of self-representation.
- \_\_\_\_\_ Decide whether the defendant understands the consequences of waiving counsel and whether he or she is doing so voluntarily (without threats or coercion).
- \_\_\_\_\_ If the defendant's waiver of counsel is knowing, intelligent and voluntary, have the defendant sign a Waiver of Counsel form, Criminal Form 9-401A.
- \_\_\_\_\_ 9. If one has not been provided previously, provide the defendant with a copy of the criminal complaint (or citation).
- \_\_\_\_\_ 10. Tell the defendant what the charges are.
- \_\_\_\_\_ 11. Read the applicable ordinances aloud.
- \_\_\_\_\_ 12. Inform the defendant of the maximum penalty and mandatory minimum penalty for each offense charged:
- \_\_\_\_\_ If no specific penalty is provided for the offense, inform the defendant of the penalty for a petty misdemeanor: up to 90 days of jail and/or a fine up to \$500.
- \_\_\_\_\_ For DWI, read the maximum and mandatory minimum penalties for a first, second, and third offense.
- \_\_\_\_\_ 13. Explain the different pleas and their possible consequences.

- \_\_\_\_\_ 14. Ask the defendant to state his or her plea and enter the plea on the record. If the defendant refuses to plead, enter a plea of not guilty. If the defendant's plea is:
- \_\_\_\_\_ **Not guilty**, set the case for trial as soon as possible and remand the defendant to custody, release on the defendant's own recognizance, or release with bail and set conditions.
  - \_\_\_\_\_ **Not guilty by reason of insanity, or guilty but mentally ill**, transfer the defendant to the district court.
  - \_\_\_\_\_ **Nolo contendere** (no contest), make sure that the plea is voluntarily made, that the defendant realizes the plea will have the same effect as a guilty plea, and that the defendant understands the consequences of the plea. Question the defendant personally, even if he or she is represented by counsel.
    - \_\_\_\_\_ Determine whether the plea is of the defendant's own free will, whether it is made with a full understanding of all rights and possible consequences, and whether it was induced by threats or promises (other than promises made as part of a plea agreement).
    - \_\_\_\_\_ Ask the defendant personally whether the plea is voluntary and whether the decision to plead no contest is the result of prior discussions between the prosecutor and the defendant or the defendant's attorney.
    - \_\_\_\_\_ Advise the defendant that if he or she is not a U.S. citizen, the plea may have an effect on his or her immigration or naturalization status. If the defendant is represented by counsel, the court must determine if the defendant has been advised by counsel of the immigration consequences of the plea.
    - \_\_\_\_\_ Use Criminal Form 9-406A (Guilty Plea Proceedings) as a checklist to ensure the plea is voluntary and otherwise acceptable and proper.
  - \_\_\_\_\_ **Guilty**, make sure that the plea is voluntarily made, that the defendant realizes the consequences of the plea, and that there is a factual basis for the guilty plea. Question the defendant personally, even if represented by counsel.
    - \_\_\_\_\_ The factual basis may be established by simply asking the defendant "What did you do that makes you believe you are guilty of this offense?" The defendant's answer must establish every element of the offense, including general or specific criminal intent.
    - \_\_\_\_\_ The plea must be of the defendant's own free will, with a full understanding of all rights and possible consequences. The plea must not have been induced by threats or promises. Ask the defendant

personally whether the plea is voluntary and whether the decision to plead guilty is the result of prior discussions between the prosecutor and the defendant or the defendant's attorney.

\_\_\_\_\_ Advise the defendant that if he or she is not a U.S. citizen, the plea may have an effect on his or her immigration or naturalization status. If the defendant is represented by counsel, the court must determine if the defendant has been advised by counsel of the immigration consequences of the plea.

\_\_\_\_\_ Use Criminal Form 9-406A (Guilty Plea Proceeding) as a checklist to ensure the plea is voluntary and otherwise acceptable and proper.

\_\_\_\_\_ 15. Determine whether a plea of guilty or no contest is acceptable.

\_\_\_\_\_ Review the plea agreement, if any. It must be in writing. (See Criminal Form 9-408A.)

\_\_\_\_\_ If acceptable, sign the agreement.

\_\_\_\_\_ If the plea is accepted, order a presentence investigation and report or go directly to sentencing.

\_\_\_\_\_ If not acceptable, allow the defendant to withdraw a plea of guilty or no contest.

\_\_\_\_\_ If the plea is not acceptable, enter a plea of not guilty, set the case for trial as soon as possible, and remand the defendant to custody, release on own recognizance, or release with bail and set conditions of release (if not already done).