

14.3: Arraignment Proceedings Where Jail Will Not Be Imposed

Checklist

(Use in all traffic cases except DWI, Reckless Driving, and Driving on a Suspended or Revoked License; all criminal cases without a mandatory jail sentence; and all cases where the judge has chosen not 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 private counsel at every stage of the proceedings, but no right to representation by a court-appointed attorney;
 - _____ 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 wants private counsel, 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 one has not been provided previously, provide the defendant with a copy of the criminal complaint (or citation).
- _____ 8. Tell the defendant what the charges are.
- _____ 9. Read the applicable ordinance(s) aloud.
- _____ 10. Determine whether the defendant understands the charge(s).
- _____ 11. 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.
- _____ 12. Explain the different pleas available and their possible consequences.
- _____ 13. 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.

_____ 14. 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).