

## MODEL SCRIPT FOR ACCEPTING A GUILTY OR NO CONTEST PLEA

The court may not accept a guilty or no contest plea to a felony or other charge on which the defendant appears in person without first addressing the defendant personally and determining that the defendant understands the nature of the charge. ORS 135.385(1). A defendant may plead no contest only with the **consent** of the court, which must consider the views of the parties and the interest of the public in the effective administration of justice. ORS 135.335(2).

A defendant cannot be required to plead to an offense punishable by imprisonment until the defendant is represented by counsel or knowingly waives the right to counsel. ORS 135.380(1). A defendant who is not represented by counsel may not plead guilty or no contest to a **felony** on the day of arraignment. ORS 135.380(2). If the defendant appears without counsel, before accepting a guilty or no contest plea, advise the defendant on waiver of counsel as provided in the script entitled, "*Model Script for Waiver of Counsel.*"

*The contents of the script should be tailored to fit the unique circumstances of each individual case and defendant.*

### Introduction

- Do you understand that you have the right to plead not guilty?
- Do you understand that the court's acceptance of your plea of \_\_\_\_\_ [guilty/no contest] will result in a final conviction on the charge?
- Do you realize that pleading \_\_\_\_\_ [guilty/no contest] in this case may result in revocation of your parole, probation, or post-prison supervision and the rest of your sentence could be imposed?

### Advising the Defendant

Before accepting a guilty or no contest plea, the court **must** inform the defendant of the following:

- ★ By entering a plea of \_\_\_\_\_ [guilty/no contest], you give up: (1) the **right to a trial by jury** (including a right to a jury trial on sentencing enhancement facts); (2) the **right to confront any witnesses against you**; and (3) the **right against self-incrimination**. ORS 135.385(2)(a).
  - ⇒ Do you understand that you are giving up your right to remain silent?
  - ⇒ Do you understand that you are giving up your right to see, hear, and question the State's witnesses and the chance to present your own witnesses?
- ★ The **maximum possible sentence** on the charge(s) against you is \_\_\_\_\_ [include the maximum possible sentence from consecutive sentences]. ORS 135.385(2)(b).
  - ⇒ Do you realize that other adverse consequences may result from a conviction in this case? Have you had an opportunity to talk with your attorney about this?
- ★ If you are not a citizen of the United States, conviction of this crime may result in deportation/removal, exclusion from admission, or denial of naturalization under federal law. ORS 135.385(2)(d). That is, you may be removed from the United States, you may not be allowed to become a United States citizen, or, if you leave the United States, you may not be allowed to reenter. Have you had an opportunity to talk with your attorney about this?

- ★ If the district attorney has agreed to seek **concessions to reduce the charge or sentence** that must be approved by the court, those recommendations are not binding on the court. ORS 135.390(3).
- ★ If you are convicted of an offense involving domestic violence, as defined by ORS 135.230, federal law may prohibit you from possessing, receiving, shipping, or transporting any firearm or firearm ammunition. The conviction may negatively affect your ability to be employed in law enforcement or serve in the Armed Forces of the United States. ORS 135.385(2)(f).

## Effectiveness of Counsel

I want to ask you a few questions about your attorney.

- Have you had enough time to talk with your attorney?
- Are you satisfied with your attorney and the work that he or she has done for you?
- Is there anything that you wanted your attorney to do that has not been done?
- Are there any witnesses that should have been contacted, defenses that should have been raised, or motions that should have been filed?

## Determining Voluntariness of the Plea

*The court may not accept a plea of guilty or no contest without first determining that the plea is **voluntary and intelligently made**. ORS 135.390(1). The court must determine whether the plea is the result of prior plea discussions and a plea agreement. ORS 135.390(2).*

- ★ Are you entering a plea of \_\_\_\_\_ [guilty/no contest] because you have reached a plea agreement with the district attorney?
  - ⇒ **[If “Yes.”]:** I will consider the agreement carefully but I am not bound by it, and I may reach a different decision on how to sentence you. ORS 135.432(4).
- ★ **[EDP Plea]:** Are you entering a guilty plea because the district attorney made a plea offer and agreed disposition recommendation under an **early disposition program** (EDP)?
  - ⇒ **[If “Yes.”]:** If I determine that your plea is voluntary and the disposition recommendation is **appropriate**, I will sentence you as provided in the agreed disposition recommendation. If I determine that the agreed disposition recommendation is inappropriate for your case, I will allow you to withdraw your plea. ORS 135.385(2)(e); ORS 135.390(4).
  - ⇒ **[If the court determines that the agreed disposition recommendation is inappropriate in the case]:** I have determined that the agreed disposition recommendation is not appropriate in your case; therefore, you will now have an opportunity to withdraw your plea. Would you like to withdraw your plea? ORS 135.390(4)(b).
- ★ **[If the parties request a review of a tentative plea agreement]:** I **agree** with the proposed disposition in the plea agreement and I will sentence you accordingly if the information available to me at the time of sentencing, including the presentence report, is consistent with what you have represented to me in this plea agreement. If I decide later that your case should not be resolved as suggested in this plea agreement, I will allow you to withdraw your plea ORS 135.432(2), (3).

**[Or]:**

- ⇒ I **do not agree** with the proposed disposition in the plea agreement for these reasons: \_\_\_\_\_ [state reasons]. Would you like to withdraw your plea?

- Have you read and signed the plea petition? Did you go over the plea petition with your attorney? Do you understand it?
- Has anyone threatened or forced you to plead \_\_\_\_\_ [guilty/no contest]? Has anyone promised anything to you if you plead \_\_\_\_\_ [guilty/no contest], other than the district attorney in your plea discussions?
- Are you under the influence of alcohol or drugs? Are you suffering from any injury, illness, or disability, or taking medications that could affect your ability to make decisions?

## Determining a Factual Basis for the Plea

Before entering a judgment on a guilty or no contest plea, the court must inquire to its satisfaction that there is a **factual basis** for the plea. ORS 135.395.

- ★ **[Guilty Plea]:** Are you in fact guilty of the crime(s) charged? Tell me what you did that makes you guilty of the crime(s).
- ★ **[Alford Plea]**—“An *Alford* plea is a guilty plea in which the defendant does not admit commission of the criminal act or asserts that he is innocent. In such a situation, the trial court must determine that there is a factual basis for the plea.” *State v. Sullivan*, 197 Or App 26, 28 n.1 (2005) (citing *North Carolina v. Alford*, 400 US 25 (1970)).]: The charge(s) against you state that you \_\_\_\_\_ [state elements of charge(s)]. Do you understand the charge(s)? Do you still want to plead guilty?
  - ⇒ **[If “Yes.”]:** Do you believe that the State could produce enough evidence to convict you and that a guilty plea is in your best interest, even though you maintain that you are innocent?
  - ⇒ **[To the district attorney]:** Please recite on the record the facts that make up the basis for the charge(s).
  - ⇒ **[To defense counsel]:** Is the district attorney’s recitation of the facts consistent with your understanding of them? Are you of the opinion that a plea of guilty is in the best interest of your client?
  - ⇒ **[To the defendant]:** Do you have any objection to the district attorney’s statements or the comments of your attorney?
    - **[If the court finds a strong factual basis for the plea]:** Although you refuse to admit guilt, the court finds that a strong factual basis exists for your plea of guilty. The court accepts your plea.
    - **[If the court does not find a strong factual basis for the plea]:** The court is not satisfied that a sufficient factual basis exists to support a guilty plea in your case. The court does not accept your plea of guilty. *See State v. Brumfield*, 14 Or App 273 (1973) (court did not abuse discretion in refusing to accept *Alford* plea).
- ★ **[No Contest Plea]:** I am going to explain to you the effect of a no contest plea. A no contest plea neither admits nor denies that you have committed a crime. What you are telling the court is that you have chosen not to contest the charge(s) to which you are pleading no contest. After you have entered your plea, I will ask the prosecutor in this case to briefly summarize the evidence the State would present if this case were to go to trial. If that evidence satisfies the elements of \_\_\_\_\_ [state charge(s) or lesser included offense(s) to which defendant is pleading no contest], then I will make a finding of guilty and a conviction will be entered. You will not have an opportunity to dispute the evidence, to call any witnesses, or to raise any defenses. Do you understand that a plea of no contest will result in a conviction on the charge(s) of \_\_\_\_\_ [state charge(s)]?



- ⇒ **[To the district attorney]:** Please summarize the State’s evidence on the charge (s) of \_\_\_\_\_ [state charge(s)].
- ⇒ **[To the defendant]:** Do you have any questions about the effect or consequences of a no contest plea?
  - **[If “No.”]:** After considering the views of the parties and the interest of the public in the effective administration of justice, the court consents to the entry of your no contest plea and finds that there is a sufficient factual basis for the plea.

### Violent Felony: Victim Input on Plea Agreement

*In any case involving a **violent felony**, defined as a “person felony” as defined in OAR 213-003-0001, before accepting a plea of guilty or no contest, the court must determine whether the victim was consulted regarding plea discussions. See ORS 135.406; Or Const Art I, § 42(1)(f).*

- **[To the defendant]:** The victim in this case has the right to request to be consulted about any plea agreement.
- **[To the district attorney]:** Has the victim requested to be notified and consulted regarding plea discussions?
  - ⇒ **[If “Yes.”]:** Does the victim agree or disagree with the plea discussions and agreement? What are the victim’s reasons for agreement/disagreement?
  - ⇒ **[If “No.”]:** *The district attorney’s failure to notify and consult the victim does not affect the validity of the plea. ORS 135.406(3).*
- **[To the defendant]:** You also should be aware that at the **time of sentencing**, the victim (or the victim’s next of kin) has the right to appear and express any views about the crime, the person responsible, the impact of the crime on the victim, and the need for restitution and a compensatory fine. ORS 137.013; Or Const Art I, § 42(1)(a).

### Dangerous Offender & Sexually Violent Dangerous Offender

**[If the State has given notice of enhancement facts that may result in a dangerous offender conviction or a sexually violent dangerous offender conviction]:** After you enter your plea, this court may determine during the sentencing phase that you are a **dangerous offender** or a **sexually violent dangerous offender** and subject you to a different or additional penalty. ORS 135.385(2)(c); ORS 137.765(2). *See generally* ORS 136.765 to 136.785; ORS 137.765.

### Sex Offender

**[If charged with a “sex crime” as defined in ORS 181.594]:** The crime(s) with which you are charged are sex crimes. Are you aware that once you return to the community you will be required to register and report as a sex offender? ORS 181.595; ORS 181.596; ORS 181.603(1).

### Interstate Compact

**[If charged with a crime subject to the Interstate Compact]:** You are charged with a crime subject to the Interstate Compact for Adult Offender Supervision. If you are released on probation, parole, or post-prison supervision, you must check with your probation/parole officer or the court before leaving the state. You may be required to request transfer of supervision.

### Accepting the Plea

Do you still want to plead \_\_\_\_\_ [guilty/no contest]?

- ★ **[If “Yes.”]:** The court finds that your plea of \_\_\_\_\_ [guilty/no contest] is knowingly, voluntarily, and intelligently made. The court accepts your plea.

