

CPL ARTICLE 220: PLEA.

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A defendant generally enters a plea at arraignment to the accusatory instrument.

A defendant can plead "not guilty" as of right, such constitutes a denial of ALL charges.

A defendant can also plead "guilty" to ALL counts, **EXCEPT:** where Murder 1 is charged (*UNLESS* the sentence will be a term of imprisonment, and with the consent of the People, and only if the Court permits).

A defendant may be allowed to plead to only *some* of the counts; **OR** to lesser-included offenses (or a mix of both), **ONLY** with consent of the People **AND** permission of the Court.

Allowable Lesser-Included Pleas:

- 1) Class A felony charge pursuant to P.L. 220 (controlled substances) = plea to at least a B felony; if Class B (220) = at least a D felony.
- 2) Class A violent *or* B violent **AND** armed felony = at least C violent.
- 3) Class B or C violent = D violent.
- 4) **IF:** NOT one of the above cases, **AND** defendant was already convicted of a "predicate" felony = at least a felony [Class E].
- 5) Any Class B except as above (P.L. 220 or violent) = any felony [Class E].
- 6) For an instrument with an allegation of P.L. 265.02(4) [Criminal Possession of Weapon in the Third] as a Class D violent felony: **if** defendant had previously been convicted of any Class A misdemeanor within last 5 years = plea to lesser-included offense as Class E violent; **else** = CPW 4 as Class A misdemeanor also an allowable plea.
- 7) E Felony of Aggravated Harassment of Employee by Inmate = any Class E felony.
- 8) Juvenile Offender: plea of 14-15 year old charged with Murder 2 **must** be to a an offense "criminal responsible" for.
- 9) For any other Juvenile Offender, may *either* plead to a "criminally responsible" offense; **OR** **IF** the Court accepts the District Attorney's subscribed memorandum recommending removal to family Court "in the interests of justice" = plea to **non-**"criminally responsible" offense, which then constitutes a delinquency fact-finding [**EXCEPT:** 13 year-old charged with Murder 2 must plead to at least a charge

constituting a "designated felony" pursuant to Family Court Act]. Case is then removed to Family Court pursuant to CPL 725.

IF: 13 year-old charged with Murder 2, or 14-15 with Rape 1/Criminal Sexual Act 1/Armed Felony = D.A.'s memorandum must also address at least one specific factor regarding:

- a) "mitigating circumstances";
- b) that defendant [if not sole perpetrator] played a relatively minor role (though not so minor as to defend against culpability);
- c) deficiency in proof;
- d) **IF** no prior designated felony findings = act not part of a pattern, and unlikely to be repeated.

Defendant may also plead "not responsible" by reason of mental defect, **ONLY** by consent of District Attorney (in writing, or orally on record) if satisfied that such would be proven at trial by preponderance of evidence, **AND** with permission of the Court. District Attorney must also state to the Court the reasons for accepting the plea, as well as any evidence available to the People (including psychiatric). Defendant's counsel must state opinion that defendant has capacity to understand proceeding, ability to assist in own defense, and awareness of consequences of plea.

On a plea of "not responsible" due to mental defect, judge must address defendant - in open court - as to:

- 1) understanding of the charge(s);
- 2) right to plead not guilty;
- 3) right to jury trial;
- 4) that plea of "not responsible" waives such trial;
- 5) that defendant thereafter waives right against self-incrimination ("Fifth") regarding Court's questions about these offense(s);
- 6) that such a plea will have same effect of **verdict** after trial of "not responsible".

Court must then determine: a) that such plea has factual basis, and is knowingly/voluntarily made; b) that indictment would be proven at trial; and that c) defendant's affirmative defense of mental defect would also have been established by preponderance of evidence.

Various lesser-included offenses; [ONLY FOR PLEA NOT FOR VERDICT]:

- 1) crime where intent is prerequisite = lesser-included charge of "reckless" *or* "criminally negligent";
- 2) if "reckless" crime, lesser-included = "criminally negligent";
- 3) if crime involves soliciting, facilitating, or conspiring, lesser = Criminal Solicitation/Facilitation/Conspiracy;
- 4) Assault (including attempted) OR Menacing, lesser = Harassment;

- 5) Felony Murder 2, lesser = any underlying felony;
- 6) UNSPECIFIED: Robbery/Burglary/Kidnapping/Arson, lesser-included may be the *lowest* degree; **OR** an Attempt;
- 7) Criminal Sale/Possession of Controlled Substance, lesser = any such offense, any degree.

Acceptance of plea to part of an indictment constitutes disposition of entire instrument.

If separate indictments be also pending against a defendant, a plea on one may "cover" others if those Courts and District Attorneys consent in WRITING. After such consent is received: the Court taking a plea notifies the consenting court, whereupon other pending indictment shall be dismissed.

Allowable Pleas to "cover":

- 1) If indictment to be dismissed charges A1 felony (death by steak sauce :) *no, actually murder*) **or** attempt thereto = plea must be to at least Class A felony; **EXCEPT:** "eligible youth" [see Penal Law] may plead to Class B felony and be adjudicated a "youthful offender".
- 2) Class AII = A/B.
- 3) If indictment to be dismissed charges any felony, AND defendant was previously convicted of a "predicate" felony (if NO "predicate": where non P.L. 220 Class A **or** B violent & armed) = plea must be to Class A, **or:** B/C *violent*.
- 4) If to-be dismissed indictment [or *not* to-be, that is the question!] charges B/C violent = plea to Class A/B/C, **or** D violent.
- 5) If indictment to be dismissed charges the Class D violent felony of Criminal Possession of Weapon 3 = plea to *any violent* felony; **OR:** Class A Misdemeanor of Weapons Possession ONLY if no Class A Misdemeanor conviction within past 5 years.
- 6) Non-violent B felony = plea to any felony.
- 7) Class B Controlled Substance count (P.L. 220) = B/C/D.
- 8) Juvenile Offender must plea to an offense "criminally responsible" for in order to cover another indictment.

If a plea is made to a misdemeanor charge, but defendant denies prior predicate felony conviction = hearing thereupon: also binding at sentencing.

Pleas are by Defendant, orally; **EXCEPT:** Corporation only pleads through counsel. Court **may** allow attorney to enter plea on behalf of natural defendant, but only upon written authorization.

If defendant fails to plea ("mute") = deemed "not guilty".

Consent of District Attorney and permission of the Court - where necessary for plea - can either be orally on record; **OR:** written. Any sentencing agreement must also be so recorded. Prosecutor must also provide to the Court at time of plea: description/value

of any property which the defendant forfeits thereby. D.A. must then forward same to Department of Criminal Justice Services Commissioner within 30 days of Court accepting such plea; together with the Defendant's name, and date of plea.

Court must advise an alien upon plea of potential deportation consequences, however a failure to do so does NOT affect the plea.

A defendant can withdraw a "NOT guilty" plea as or right *before* rendition of verdict.

Court **may** allow defendant to withdraw "guilty" plea, only *before* sentence.

If a defendant pleads to a count requiring further proof by "Special Information", but does NOT admit such extra allegations: Court **must** hold hearing thereupon, *UNLESS* People waive.