

Criminal trial or guilty plea?

Making your decision



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It is your decision

The decision whether or not to plead guilty belongs to you rather than your criminal defense attorney. The law places the final decision in your hands, for you are the one who must live with the decision.

Your defense attorney must communicate to you all plea offers. However, you are entitled to your attorney's advice about what would be in your best interests.

Know your criminal case

Often, there is no correct decision. No one can calculate with certainty the chances of acquittal, because much depends on factors you cannot assess until the end of the trial, such as the jury's composition and the witnesses' appeal. Add to this the paucity of discovery in criminal cases, and any estimation as to probability of acquittal becomes little more than guess-work.

However, you and your defense attorney can sharpen your estimation by increasing the amount your attorney knows about the case through discovery, motion practice, discussions with the prosecutor, and witness interviews.



Consider your situation

It is frequently very difficult to decide whether a plea or a trial is the correct decision. You are faced with such things as:

- With a ten percent chance of acquittal, is a plea to a likely five-year sentence a better choice than facing 15 years after trial?
- With the same ten percent chance of acquittal, is a plea to 15 years the better option than 25 years after trial?

The answer depends on many factors such as your appetite for risk, your age, your ability to endure a stressful trial, your prior experience with prison, and your family situation.



Work with your criminal defense attorney

Your defense attorney's experience and knowledge is valuable. Draw on his experience with trials, juries, and judges and to predict the verdict that will result from the evidence.

Discuss all of your concerns with your attorney, and then take time to think about it. Go home and consider the options, discuss it with loved ones, and call your attorney with questions.

Talk with family and friends

You may fear disappointing friends and family by admitting guilt.

However, those same friends and family might have a degree of objectivity that you lack. You may find that they end up assuring you that they will respect you even if you plead guilty, that they are concerned for your well-being, and that they suggest that you give up the fight so that you can do your time and return home as soon as possible.

Preparing for the plea

The change of plea hearing may be the trial judge's only opportunity to size you up face-to-face before sentencing. Be attentive, well-dressed, respectful, articulate, and contrite. A plea is not the time to attempt to minimize your wrongdoing.

Talk to your attorney about the questions the judge will ask you. Find out how much the judge expects you to say when asked to admit your guilt.

Some judges have the prosecutor summarize the evidence and then ask the defendant whether he agrees. A "yes" or "no" suffices. Others merely recite the charge and ask the defendant if he did it, again expecting a simple "yes" or "no." In these courtrooms, your attorney might discuss with the prosecutor in advance of the plea what he will say. You do not want to be

nitpicking the prosecutor's statements and annoying the judge. On the other hand, you do not want to admit to unnecessary or untrue aggravating circumstances. Do not quibble with inconsequential assertions.

Other judges turn to the defendant and ask him to state, in his own words, what he did to make him guilty of the charge. In this situation you should state the facts underlying your guilt succinctly, without excuses. Too many excuses may talk the judge out of accepting the plea. Do not say "I know now that what I did was wrong." This suggests that you acted with innocent intent at the time of the offense. The judge wants to hear acceptance of responsibility, not excuses.

On the other hand, an articulate and remorseful description of your misconduct can impress the judge and start him thinking that you deserve another chance.

Taking the plea

The mechanics of entering a guilty plea are that the judge will ask you six categories of questions to ensure that the plea is entered knowingly and voluntarily:

- Questions concerning your mental competence.
- Questions concerning your satisfaction with your legal representation.
- Questions to ensure that you understand the legal rights you surrender by pleading guilty, including trial and appellate rights.
- Questions to ascertain your understanding of the penalties for conviction.
- Questions about the existence of any plea agreement and any other threats or promises.
- Questions to assure the court that there is a factual basis for your guilt.

These questions can be quite exhaustive.

Some courts have you review and sign a written advice of rights form.

I hope this information has been helpful. If I can provide legal assistance, please contact me at:

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