

# Guilty and No Contest Plea Checklist for Misdemeanors<sup>1</sup>

NOTE: A district judge *must* take a plea to a misdemeanor as provided by court rule if a plea agreement is reached between the parties. [MCL 766.4\(3\)](#); see also [MCR 6.111\(A\)](#).<sup>2</sup>

- Identify case number and parties for the record.
- Do not accept a plea of guilty or no contest unless convinced that the plea is understanding, voluntary, and accurate. [MCR 6.610\(F\)\(1\)](#).
- In determining the accuracy of the plea:
  - If defendant pleads guilty, establish support for a finding that he/she is guilty of the offense charged or the offense to which he/she is pleading. [MCR 6.610\(F\)\(1\)\(a\)](#).
  - If defendant pleads no contest, do NOT question him/her about his/her participation in the crime; make the determination on the basis of other available information. [MCR 6.610\(F\)\(1\)\(b\)](#).
- Inform defendant of the right to the assistance of an attorney. [MCR 6.610\(F\)\(2\)](#).
- If the offense charged requires on conviction a minimum term in jail, or if the court determines that it might sentence to a term of incarceration (even if suspended), inform defendant that if

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<sup>1</sup> For more detailed information on this topic, see the Michigan Judicial Institute's [Criminal Proceedings Benchbook, Vol. 1](#), Chapter 6.

<sup>2</sup> However, following bindover, "[t]he circuit court retains jurisdiction over any case in which a plea is entered or a verdict rendered to a charge that would normally be cognizable in the district court." [MCR 6.008\(C\)](#). For additional information on jurisdiction following bindover, see the Michigan Judicial Institute's [Criminal Proceedings Benchbook, Vol. 1](#), Chapter 7.

he/she is indigent he/she has the right to an appointed attorney.  
[MCR 6.610\(F\)\(2\)](#).

- Advise defendant of the following:
  - The mandatory minimum jail sentence, if any, and the maximum possible penalty for the offense. [MCR 6.610\(F\)\(3\)\(a\)](#).
  - That if the plea is accepted, he/she will not have a trial of any kind and that he/she gives up the following rights that he/she would have at trial:
    - The right to have witnesses called for his/her defense at trial;
    - The right to cross-examine all witnesses called against him/her.
    - The right to testify or to remain silent without an inference being drawn from said silence.
    - The presumption of innocence and the requirement that his/her guilt be proven beyond a reasonable doubt. [MCR 6.610\(F\)\(3\)\(b\)](#).

**Note:** Defendant may be informed of his/her trial rights on the record, in a writing made part of the file, or in a writing referred to on the record. If using a writing, address defendant and obtain from him/her orally on the record a statement that the rights were read and understood and a waiver of those rights. The waiver may be obtained without repeating the individual rights. [MCR 6.610\(F\)\(4\)](#). A writing includes digital communications, transmitted through electronic means, that can be stored and printed. [MCR 6.610\(F\)\(7\)](#).

- Make the plea agreement a part of the record and determine that the parties agree on all the terms of that agreement. Accept, reject or indicate on what basis the court accepts the plea. [MCR 6.610\(F\)\(5\)](#).
- Ask defendant:
  - (If there is no plea agreement) whether anyone has promised him/her anything, OR (if there is a plea agreement) whether anyone has promised anything beyond what is in the plea agreement;

- Whether anyone has threatened him/her; and
- Whether it is his/her own choice to plead guilty. [MCR 6.610\(F\)\(6\)](#).
- Note:** A plea of guilty or no contest in writing (which includes digital communications, transmitted through electronic means, that are capable of being stored and printed) is permissible without a personal appearance of the defendant and without support for a finding that he/she is guilty of the offense charged or the offense to which he/she is pleading if:
  - The court decides that the combination of circumstances and the range of possible sentences makes the situation proper for a plea of guilty or no contest;
  - The defendant acknowledges guilt or no contest, in a writing to be placed in the district court file, and waives in writing the rights enumerated in [MCR 6.610\(F\)\(3\)\(b\)](#); and
  - The court is satisfied that the waiver is voluntary. [MCR 6.610\(F\)\(7\)](#).
- Set or continue bail. See [MCR 6.106\(E\)](#).
- Advise or remind defendant of any conditions attendant to his/her release. [MCR 6.106\(D\)](#).
- Set sentencing date or, if plea was taken in district court, request circuit court to set sentencing date.

