

FEDERAL DEFENDER
PLEA NEGOTIATIONS AND CHANGE OF PLEA

PLEA NEGOTIATIONS: Before your case goes to trial, your attorney may try to negotiate a plea agreement with the prosecutor. **YOUR ATTORNEY WILL NOT MAKE ANY DEALS FOR YOU WITHOUT YOUR PERMISSION.** But he or she will find out what kind of an offer the prosecutor is willing to make in your case. Then you can decide what to do, with your attorney's advice.

Sometimes defendants cooperate with the government as part of a deal. These situations are not addressed in this Handout. Ask your lawyer if you have questions.

GUILTY PLEAS AND THE SENTENCING GUIDELINES: Sentences in federal court are determined partially by the U.S. Sentencing Guidelines. Please see link on Sentencing. Your attorney will show you how the Guidelines will apply to you if you plead guilty, and if you go to trial. In most cases, pleading guilty will automatically result in a lighter sentence than if you were to lose at trial. That is because when you plead guilty, you get a sentencing "credit" for accepting responsibility. See the link on Sentencing to learn more.

HOW PLEA AGREEMENTS WORK: A plea agreement is a deal between you and the prosecutor. The judge is not part of the deal. In federal court, the judge is not allowed to be part of plea negotiations at all. Your part of the deal is to plead guilty. In some deals, the defendant pleads guilty to a lesser charge, or to only some of the charges. Sometimes the defendant pleads guilty to all the charges. The prosecutor's part of the deal is to recommend a sentence you can live with, one that is a lighter sentence than if you had lost at trial.

Because a plea agreement is a deal between you and the prosecutor, it does NOT guarantee that the judge will give you the sentence you hope for. As long as the prosecutor makes the recommendation in the plea agreement, he or she has kept the government's side of the bargain. That means you have to keep your side of the bargain, and cannot take back your guilty plea if the judge gives you a different sentence than you hoped for.

Most judges in this district follow plea agreements, but **THE JUDGE DOES NOT HAVE TO FOLLOW THE RECOMMENDATION.** The judge can legally sentence you to whatever the Guidelines and the law allow. In our experience, however, the judges are very good about honoring deals.

There is also another type of plea agreement which is binding on the court. In a few cases, the plea agreement provides that you will get a specific sentence, and if you do not get it you can take back your guilty plea. Then you could try to negotiate a new plea, or go to trial. It is up to the judge to accept or reject this agreement. The prosecutor does not have to offer this kind of deal. The prosecutors in this district offer binding plea agreements rarely, and only in very special types of cases. In most cases, your only choice is between a non-binding agreement and no agreement.

Plea agreements are put in writing and signed by the defendant, defense counsel, and the prosecutor. Before signing a plea agreement, read it carefully and make sure you understand all of it. Your attorney will go over it with you, and answer any questions you may have.

CHANGING YOUR PLEA: If you decide to change your plea to guilty, there will be a Change of Plea hearing. If you plead guilty, you are giving up many valuable constitutional rights. Your lawyer will discuss these with you before you decide to accept a plea offer. The judge will also want to make sure that you understand the rights you are giving up. The judge will make sure that you understand what is going on, and that you are pleading guilty because you want to and not because someone is forcing you. The judge will go through your rights one by one; will make sure you understand the possible sentences; and will also ask you to admit facts supporting the charges to which you are pleading guilty. Each judge handles changes of plea a little differently. Ask your lawyer what to expect.

REMAND: If you were out of custody before your plea, the judge might have you taken into custody after your plea. Discuss this possibility with your attorney.