

**PETTY OFFENSE
(Unrepresented)**

1. ***[To Defendant]*** Are you _____ (name)?
2. Have you received a copy of the [notice of violation/information/complaint]?
3. You have been charged with _____. The maximum possible penalty is:
 - a. [6 months (Class B); 30 days (Class C); 5 days (Infraction)] of imprisonment.
 - b. A fine of up to \$ 5,000.
 - c. A mandatory special assessment of [\$10 (Class B); \$5 (Class C/Infraction)].
 - d. ***[If applicable]*** Restitution in the amount of \$ _____ .
 - e. ***[If applicable]*** Forfeiture of the property described in the [notice of violation/complaint/information]
 - f. If you are not a United States Citizen, your conviction may also have immigration consequences. ***[NOTE: The best practice is to give this warning to all defendants rather than guess about defendant's citizenship status]***
4. ***[To U.S. Attorney]*** Is it the government's position that a sentence of imprisonment should be imposed here?
 - a. ***[If no imprisonment contemplated by government or court]***
I find that this is an offense for which the court would not impose imprisonment and therefore apply the provisions of Federal Rule of Criminal Procedure 58(a)(2).

5. ***[To Defendant]*** I will now advise you of your rights.

a. You have the right to be represented by an attorney at all stages of the proceedings. If you wish to retain an attorney or confer with one before we proceed in your case, I will give you time to do so.

b. ***[Only if imprisonment is a possibility]*** If you cannot afford an attorney, I will appoint an attorney to represent you at no cost or expense to you.

i. [If the defendant claims to be unable to afford counsel, have him or her execute an affidavit and determine whether he or she qualifies for appointed counsel]

c. You have the right to remain silent. You do not have to make a statement during this hearing. If you do make a statement, anything you say can and will be used against you in court.

d. You have a right to a bench trial before a United States Magistrate Judge.

e. If you are not a U.S. citizen, you may request that an attorney for the government or a federal law enforcement official notify a consular officer from your country of nationality [of the charges against you] [that you have been arrested]. Even without your request, a treaty or other international agreement may require consular notification. ***[NOTE: The best practice is to inform all defendants of this right rather than guess about a defendant's citizenship status]***

6. Do you understand?

7. Are you prepared to plead at this time?

8. How do you plead to the charge(s) of _____, guilty or not guilty?

NOT GUILTY

9. The plea of not guilty is accepted. This matter is continued for trial no earlier than 30 days from now at a date to be set by the Clerk's Office. The parties shall have 10 days from today within which to file all motions with supporting memorandum pursuant to the Local Rules.
10. **[To U.S. Attorney]** Does the government have any recommendation regarding any conditions of release?
11. **[To Defendant—EXAMPLE]** I am releasing you on your own recognizance. You must appear before this court when ordered and a failure to do so will expose you to prosecution for the separate and distinct federal charge of failing to appear for court. Do you understand?

GUILTY (No Imprisonment)

12. Before I accept your plea, I must satisfy myself of certain things.
13. Do you understand the nature of the charge(s) and the maximum possible penalties as I have previously explained them?
14. Are you pleading guilty freely and voluntarily?
15. Do you understand that by pleading guilty you are giving up your right to a trial and all proceedings connected with a trial?
16. Are you pleading guilty because you and the government have reached an agreement?
 - a. ***[To U.S. Attorney]*** Please tell me what agreement you have reached with the defendant.
 - b. ***[To Defendant]*** Is that your understanding of the agreement as well?
 - c. ***[If the government has agreed to make a nonbinding RECOMMENDATION]***
 - i. Do you understand that if I accept your plea and sentence you to something different than what is recommended or requested, you will not be able to withdraw your guilty plea?
 - d. ***[If BINDING agreement, detail the specifics of the agreement regarding dismissal of other counts and/or sentence limitations and inform the defendant that he/she will have the opportunity to withdraw the plea if you reject the agreement]***
 - e. ***[If agreement contains a waiver of right to appeal]***

- i. Ordinarily you would have the right to appeal the sentence or the sentencing procedures or any error that I might make in these proceedings. But you are agreeing here not to take any such appeal [if the sentence I impose is ____ months or less]. Do you understand?

17. Are you pleading guilty because you are actually guilty?

18. I am satisfied that you understand the nature of the charge(s) and the maximum possible penalties provided by law. Further, I find that your guilty plea has been made knowingly and intelligently; that it has been made voluntarily and not as a result of force of threats or promises [apart from the plea agreement]; and that there is a factual basis for the plea. I therefore accept your plea of guilty and adjudge you guilty of the offense.

[Proceed to sentencing]

GUILTY (Possible Imprisonment)

19. Before I accept your plea, I must satisfy myself of certain things.
20. You have been charged with _____.
21. Do you understand the nature of the charge(s) against you?
22. Do you understand the maximum possible penalty is [6 months (Class B); 30 days (Class C); 5 days (Infraction)] of imprisonment, a fine of up to \$ 5,000, and a mandatory special assessment of [\$10 (Class B); \$5 (Class C/Infraction)]? ***[If applicable, also outline possible restitution and/or forfeiture]***
23. Do you understand that you have a right to be represented by an attorney at every stage of the proceedings and, if necessary, one will be appointed to represent you?
24. Do you understand that you have a right to plead not guilty and to persist in that plea?
25. Do you understand that you have a right to a trial at which you would be presumed innocent and the burden would be on the Government to prove your guilt beyond a reasonable doubt?
26. Do you understand that, at the trial, you would have the right to be represented by counsel, the right to confront and cross-examine witnesses who testify against you, the right to testify on your own behalf if you so choose, the right to compel the attendance of witnesses, and the right not to be compelled to incriminate yourself?
27. Do you understand that, if your plea of guilty is accepted by the Court, there will be no further trial of any kind?
28. Do you understand, therefore, that by pleading guilty, you are waiving the right to a trial and consenting to the conviction on the charge(s), and that

nothing will remain for me to do other than to determine your punishment?

29. Do you understand that if you plead guilty and are not a United States citizen, you may be removed from the United States, denied citizenship, and denied admission to the United States in the future?
30. Are you currently under the influence of any drug, alcohol, or similar substance?
31. Did anyone use force or threat of force against you to get you to plead guilty?
32. Did anyone make any promise to you to get you to plead guilty apart from the terms of any plea agreement?
33. Are you pleading guilty because you and the government have reached an agreement?
 - a. ***[To U.S. Attorney]*** Please tell me what agreement you have reached with the defendant.
 - b. ***[To Defendant]*** Is that your understanding of the agreement?
 - c. ***[If the government has agreed to make a nonbinding RECOMMENDATION]***
 - i. Do you understand that if I accept your plea and sentence you to something different than what is recommended or requested, you will not be able to withdraw your guilty plea?
 - d. ***[If BINDING agreement, detail the specifics of the agreement regarding dismissal of other counts and/or sentence limitations and inform the defendant that he/she will have the opportunity to withdraw the plea if you reject the agreement]***

e. ***[If agreement contains a waiver of right to appeal]***

- i. Ordinarily you would have the right to appeal the sentence or the sentencing procedures or any error that I might make in these proceedings. But you are agreeing here not to take any such appeal [if the sentence I impose is ____ months or less]. In other words, I would be the last judge in your case and you are agreeing that you will not be able to overturn what I do. Do you understand?
34. Do you understand that in determining your sentence, the court will be obligated to consider the sentencing factors under Title 18 U.S.C. § 3553(a), including the nature of the offense, your history and characteristics, and the need for the sentence imposed?
35. ***[To U.S. Attorney]*** Please inform me what evidence the government would produce if this matter should go to trial?
36. ***[To Defendant]*** Is there any respect in which you disagree with what the government represented it would produce if this matter should proceed to trial?
37. Is the information true to your own personal knowledge?
38. Based on my questioning and observation of you, I am satisfied that you understand the nature of the charge(s) and the maximum possible penalties provided by law. Further, I find that your guilty plea has been made knowingly and intelligently; that it has been made voluntarily and not as a result of force of threats or promises [apart from the plea agreement]; and that there is a factual basis for the plea. I therefore accept your plea of guilty and adjudge you guilty of the offense.

[Proceed to sentencing]

SENTENCING (Continuance)

39. Sentencing will be continued to _____, to allow [an investigation by U.S. Probation & Pretrial Services and the preparation of a presentence report] [the parties to submit additional information]. ***[A presentence report is rarely necessary in petty offense cases]***
40. ***[To U.S. Attorney]*** Do you have any recommendation regarding any conditions of release?
41. ***[To Defendant—EXAMPLE]*** I am releasing you on your own recognizance. You must appear before this court when ordered and a failure to do so will expose you to prosecution for the separate and distinct federal charge of failing to appear for court. Do you understand?

SENTENCING (Binding Agreement Accepted)

42. ***[To Defendant]*** I will embody in the judgment and sentence the disposition provided for in the plea agreement. You are hereby sentenced as follows. ***[Choose applicable]***
- a. You are hereby committed to the Bureau of Prisons for a term of imprisonment of _____.
 - b. [Upon release from imprisonment] you are sentenced to _____ months/years of probation [5 years maximum (Class B & Class C); 1 year maximum (Infraction)]; not eligible for supervised release].
[Outline probation conditions]
 - c. You are ordered to pay to the United States the sum of \$ _____ as a fine, together with a special assessment of [\$10 (Class B); \$5 (Class C & Infraction)] [and a mandatory CVB processing fee of \$30], for a total payment of \$_____.
 - i. Will you need additional time to make such a payment?
 - d. You must make restitution as follows _____.
 - e. You are ordered to forfeit the property described in the [notice of violation/information/complaint].
43. ***[If no appeal waiver]*** You are advised that you have the right to appeal your sentence. If you desire to appeal, you must file a Notice of Appeal in writing with the Court within 14 days from today. If you fail to file your notice of appeal by that time, your appeal rights will be forever gone.

SENTENCING (Recommendation Accepted/No Agreement/Binding Agreement Rejected)

44. *[If rejecting a binding plea agreement, the defendant must be given the opportunity to withdraw his/her plea]*
45. Are both sides ready to proceed now to immediate sentencing?
46. *[To U.S. Attorney]* Does the government have any recommendation on sentencing?
47. *[To Defendant]* Do you wish to make a statement of explanation before I impose your sentence?
48. After assessing the particular facts of this case and considering the relevant factors of Title 18 U.S.C. § 3553(a), I conclude that the following sentence is fair and reasonable. *[Choose applicable]*
- f. You are hereby committed to the Bureau of Prisons for a term of imprisonment of _____.
 - g. [Upon release from imprisonment] you are sentenced to _____ months/years of probation [5 years maximum (Class B & Class C); 1 year maximum (Infraction); not eligible for supervised release]. *[Outline probation conditions]*
 - h. You are ordered to pay to the United States the sum of \$ _____ as a fine, together with a special assessment of [\$10 (Class B); \$5 (Class C & Infraction)] [and a mandatory CVB processing fee of \$30], for a total payment of \$_____.
 - i. Will you need additional time to make such a payment?
 - i. You must make restitution as follows _____.

- j. You are ordered to forfeit the property described in the [notice of violation/information/complaint].
49. ***[To Defendant]*** You are hereby advised that you have the right to appeal your sentence. If you desire to appeal, you must file a Notice of Appeal in writing with the Court within 14 days from today. If you fail to file your notice of appeal by that time, your appeal rights will be forever gone. If you are unable to pay appeal costs, you have the right to ask for permission to proceed without paying court fees. At your request, the Clerk's Office will prepare and file a notice of appeal on your behalf.