

**Supreme Judicial Court  
Standing Advisory Committee on the  
Rules of Criminal Procedure**

**Proposed amendments to Rule 12**

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[Current text of Mass. R. Crim. P. 12(c) and (d)]

**Rule 12. Pleas and Plea Agreements**

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**(c) Procedure if no plea agreement or if plea agreement does not include both a specific disposition and a charge concession.**

(1) **Disclosure of the terms of any plea agreement.** If the parties have entered into a plea described in Rule 12(b)(5)(B), the parties shall disclose the terms of that agreement on the record in open court unless the judge for good cause allows the parties to disclose the terms of the plea agreement in camera on the record.

(2) **Tender of plea.** The defendant's plea or admission shall be tendered to the judge.

(3) **Colloquy.** The judge shall:

(A) Provide notice to the defendant of the consequences of a plea. The judge shall inform the defendant:

(i) that by a plea of guilty or nolo contendere, or an admission to sufficient facts, the defendant waives the right to trial with or without a jury, the right to confrontation of witnesses, the right to be presumed innocent until proved guilty beyond a reasonable doubt, and the privilege against self-incrimination;

(ii) of the maximum possible sentence on the charge, and, if applicable,

(a) any different or additional punishment based upon subsequent offense provisions of the General Laws;

(b) that the defendant may be subject to adjudication as a sexually dangerous person and required to register as a sex offender;

(c) the mandatory minimum sentence on the charge; and

(d) that a conviction or plea of guilty for an offense listed in G.L. c. 279, § 25(b) implicates the habitual offender statute, and that upon conviction or plea of guilty for the third or subsequent of said offenses: (1) the defendant may be imprisoned in the state prison for the maximum term provided by law for such third or subsequent offense; (2) no sentence may be reduced or suspended; and (3) the defendant may be ineligible for probation, parole, work release or furlough, or to receive any deduction in sentence for good conduct;

(iii) that, if the defendant is not a citizen of the United States, the guilty plea, plea of nolo contendere, or admission may have the consequence of deportation, exclusion of admission, or denial of naturalization.

(B) Factual basis for the charge. The prosecutor shall present the factual basis of the charge.

(C) Rights of victims and witnesses of crimes. If applicable, the judge shall inquire of the prosecutor as to compliance with the requirements of G.L. c. 258B, Rights of Victims and Witnesses of Crimes. At any time prior to imposing sentence, the judge shall give any person entitled under G.L. c. 258B to make an oral and/or written victim impact statement the opportunity to do so.

**(4) Disposition requests.**

(A) When there is no agreed-upon recommendation as to disposition. The judge shall give both parties the opportunity to recommend a disposition to the judge. In the District Court, the judge shall inform the defendant that the disposition imposed will not exceed the terms of the defendant's request without first giving the defendant the right to withdraw the plea. In the Superior Court, the judge shall inform the defendant that the disposition imposed will not exceed the terms of the prosecutor's recommendation without first giving the defendant the right to withdraw the plea. At any time prior to accepting the plea or admission, the judge may continue the hearing on the judge's own motion to ensure that the judge has been provided with, and has had an opportunity to consider, all of the facts pertinent to a determination of a just disposition in the case.

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**(5) Findings of judge; acceptance of plea.** The judge shall inquire whether the defendant still wishes to plead guilty or nolo contendere or admit to sufficient facts. If so, the judge will then make findings as to whether the plea or admission is knowing and voluntary, and whether there is an adequate factual basis for the charge. The defendant's failure to acknowledge all aspects of the factual basis shall not preclude a judge from accepting a guilty plea or admission. At the conclusion of the hearing, the judge shall accept or reject the tendered plea or admission.

(6) **Sentencing.** After acceptance of a plea of guilty or nolo contendere or an admission, the judge shall sentence the defendant.

(A) Conditions of probation. If the judge's disposition includes a term of probation, the judge, with the assistance of probation where appropriate and after considering the recommendations of the parties, shall impose appropriate conditions of probation.

(B) Intent to impose sentence exceeding requested disposition. In District Court, if the judge decides to impose a sentence that will exceed the defendant's request for disposition under Rule 12(c)(4)(A) or the parties' request for disposition under Rule 12(c)(4)(B), the judge shall, on the record, advise the defendant of that intent and shall afford the defendant the opportunity to withdraw the plea or admission. In Superior Court, if the judge decides to impose a sentence that will exceed the prosecutor's request for disposition under Rule 12(c)(4)(A) or the parties' request for disposition under Rule 12(c)(4)(B), the judge shall, on the record, advise the defendant of that intent and shall afford the defendant the opportunity to withdraw the plea or admission. In both District and Superior Court, the judge may indicate to the parties what sentence the judge would impose.

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requirements of G.L. c. 258B, Rights of Victims and Witnesses of Crimes. The judge shall give any person entitled under G.L. c. 258B to make an oral and/or written victim impact statement the opportunity to do so.

**(4) Review; acceptance or rejection of plea agreement.** The judge must accept or reject the plea agreement before the judge accepts a guilty plea or admission. The judge should not accept a plea agreement without considering whether the proposed disposition is just. At any time prior to the acceptance or rejection of the plea agreement, the judge may continue the plea hearing on the judge's own motion to ensure that the judge has been provided with, and has had an opportunity to consider, all of the facts pertinent to a determination whether the plea agreement provides for a just disposition in the case.

(A) Accepted plea agreement. If the judge accepts the plea agreement, the judge shall inform the defendant that the judge will impose the sentence, including the length of any term of probation, provided in the plea agreement.

(B) Rejected plea agreement. If the judge rejects the plea agreement, the judge shall, on the record and in open court (or, for good cause, in camera on the record):

(i) inform the parties that the judge rejects the plea agreement, but the judge may indicate to the parties what sentence the judge would impose or what additional information the judge will require before the judge may make this determination;

(ii) allow either party to withdraw from the plea agreement; and

(iii) allow the defendant to withdraw his or her plea or admission.

**(5) Findings of judge as to plea agreement and plea; acceptance of plea.** If the judge has accepted the plea agreement, the judge shall inquire whether the defendant still wishes to plead guilty or admit to sufficient facts. If so, the judge will then make findings as to whether the plea agreement and

plea or admission are knowing, voluntary, and supported by an adequate factual basis. The defendant's failure to acknowledge all aspects of the factual basis shall not preclude a judge from accepting a guilty plea or admission. At the conclusion of the hearing, the judge shall accept or reject the tendered plea or admission.

(6) **Sentencing.** After accepting the plea agreement and the plea or admission, the judge shall impose sentence according to the terms of the plea agreement. If the plea agreement includes a term of probation, the judge, with the assistance of probation where appropriate and after considering the recommendations of the parties, shall impose appropriate conditions of probation.

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### **DRAFT Reporter's Notes—2024**

This change to Rules 12(c) and 12(d) implements the disclosure requirements set forth in *Commonwealth v. DiBenedetto*, 491 Mass. 390, 405-407 (2023) when parties enter plea agreements with multiple defendants, in which the offer to one defendant is conditioned on one or more codefendants also pleading guilty (“package deal” plea agreements). Disclosure in these circumstances is necessary to avoid the risk that one defendant is coerced into pleading guilty by a codefendant seeking to benefit from their own offer under a package deal. In these circumstances, the judge must inquire with special care into the voluntariness of the plea and consider in addition to the traditional forms of coercion the “unique pressure from a codefendant or family member that might be present in a package deal.” *Id.* at 407.