

REPORTER'S NOTES

MASSACHUSETTS RULES OF CRIMINAL PROCEDURE

Rule 12. Pleas and Plea Agreements

Reporter's Notes—2025

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) so that a judge presented with a plea can determine whether it is voluntary. Because a plea waives constitutional rights, due process requires that it be voluntary, knowing, and made with sufficient awareness of the relevant circumstances and with the advice of competent counsel. *Brady v. United States*, 397 U.S. 742, 748, 758 (1970); *Commonwealth v. Roberts*, 472 Mass. 355, 362 (2015).

The plea judge must determine that any plea, and any plea agreement, is voluntary. See Rules 12(a)(3), 12(c)(5), and 12(d)(5). The voluntariness of a plea can be determined only by considering all of the relevant circumstances surrounding it. *Brady*, 397 U.S. at 749. The parties must therefore disclose to the plea judge any factor, disposition, or action on which the plea or plea agreement is conditioned so the judge can ascertain voluntariness.

"A plea is voluntary if entered without coercion, duress, or improper inducements." *Commonwealth v. Berrios*, 447 Mass. 701, 708 (2006). A plea is not involuntary, however, because a defendant faced pressure from considering a possible conviction at trial or subsequent sentence even for serious charges. *Id.*, 447 Mass. at 709 (Plea motivated by defendant's conclusion that he had no choice other than to plead guilty was not thereby involuntary but "endemic to any system which asks a person to forgo certain rights in order to be spared certain penalties."). Even such pressure from third parties such as counsel or family members does not necessarily render a plea involuntary. *Commonwealth v. Quinones*, 414 Mass. 423, 427-428 (1993) (Defendant's plea to second degree murder was not involuntary despite being motivated by discussions with counsel and his family members who feared his conviction of first degree murder); *Commonwealth v. Furr*, 454 Mass. 101, 111-112 (2009) (Defendant's plea as youthful offender was not involuntary even if motivated by counsel and defendant's adult brothers warning him that he could face a life sentence at trial because this "does not rise to the level of improper coercion.").

Certain situations present particular risks of undue coercion or improper inducement. These include plea agreements in cases involving multiple defendants in which the agreement is conditioned on all defendants accepting the agreement ("package deal" plea agreements). The potential for involuntariness in "package deals" may arise either from coercion or improper inducement. A defendant may be coerced to enter a plea by pressure from a codefendant who seeks to obtain their own favorable disposition, as the benefits of a package deal may not accrue

equally to all the defendants. *United States v. Hodge*, 412 F.3d 479, 489 (3rd Cir. 2005). A defendant may be improperly induced to enter a plea to obtain a favorable disposition for a codefendant. *Commonwealth v. Bolduc*, 375 Mass. 530, 533, 536-537 (1978) (Acknowledging consideration of reduced sentences for codefendants "certainly places some pressure on a defendant" but finding defendant's plea nevertheless voluntary where there was no agreement conditioned on defendant's plea.). These risks are heightened when the codefendant is a family member or close personal friend. *United States v. Mescual-Cruz*, 387 F.3d 1, 7-8 (1st Cir. 2004), cert. denied, 542 U.S. 1175 and 543 U.S. 1176 (2005).

To address these risks, whenever a plea or plea agreement is conditioned on the acceptance of more than one defendant, the plea judge must be made aware of this condition. *DiBenedetto*, 491 Mass. at 406. Awareness of these circumstances enables the plea judge "to conduct a real probe of the defendant's mind to determine that the plea is not being extracted from the defendant under undue pressure." *Commonwealth v. Foster*, 368 Mass. 100, 107 (1975) (internal quotations omitted). 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.*, 491 Mass. at 407. If the Commonwealth does not fully inform the plea judge of the nature of this condition, the defendant must be allowed to withdraw their plea. *DiBenedetto, Id.*

The risks of undue coercion or improper influence are not limited to package deals involving pleas. A defendant could be coerced or improperly induced to enter a plea to avoid a third party being charged or to obtain dismissal of charges against a third party. While a guilty plea is not invalid because it is entered in response to a promise of favorable treatment for a third party, this circumstance can affect whether it is voluntary. *Commonwealth v. Balliro*, 370 Mass. 585, 589-590 (1976) (Recognizing challenges to pleas involving lenient treatment for family members but upholding defendant's plea in exchange for favorable recommendation on sentencing codefendants as voluntary). Such circumstances must therefore be disclosed to the judge considering the plea or plea agreement.