

**IN THE CIRCUIT COURT OF _____ COUNTY,
FIFTEENTH JUDICIAL DISTRICT OF MISSISSIPPI**

STATE OF MISSISSIPPI**PLAINTIFF****VERSUS****CAUSE NO.** __________
A/K/A _____**DEFENDANT**

**PETITION TO ENTER PLEA OF GUILTY AND POSITION ON SENTENCING OF STATE
AND DEFENDANT**

1. The Defendant, after having been first duly sworn, on oath, represents and states unto the Court the following:

A. My full legal name is stated above. I request that all proceedings against me be had in my true name. I used the following other names:

B. My non-incarceration, personal, address is (no P.O. Boxes):
 Street No./Name & Apt. No./Name: _____
 City: _____ State: _____ Zip Code: _____ Phone: _____
 Email address: _____.

[I understand that if I move, I must within ten (10) days file a written notice with the Circuit Clerk's Office and my Mississippi Department of Corrections Field Agent providing my new address, email address, and/or phone number. I agree that all court notices may be sent to my mailing or email address listed above.]

C. I am represented by an attorney whose name is _____.

D. I wish to plead "GUILTY" to the charges set out below in the Position on Sentencing section because I am "GUILTY." I understand that I do not have to plea "GUILTY," and it is totally my decision and not the result of an attorney's coercion.

E. I have told my attorney all the facts, circumstances, and defenses known to me about the charges against me. I believe that my attorney is fully informed of all such matters. My attorney has counseled and advised me on the nature of each criminal charge and its elements, on any and all lesser-included charges, and on all possible defenses that I might have in this case(s).

F. I understand that I may plead "NOT GUILTY" to any offense charged against me and the Constitution guarantees me:

- i. The right to have an attorney at all proceedings, and if I cannot afford an attorney, the right to have one appointed to represent me at all stages of this charge;
- ii. The right to plead not guilty and have a jury of my peers decide the question of guilt or innocence to the charge;
- iii. The right to challenge the composition of the Grand Jury and the Trial Jury;
- iv. The right to compel the attendance and testimony of witnesses for me and the right to confront and cross examine witnesses against me;
- v. The right to testify or not testify, and that any confession I may have made must have been made knowingly, intelligently, and voluntarily of my own free will at the time it was made or it cannot be used against me;
- vi. The right to the presumption of innocence unless and until guilt is proven beyond a reasonable doubt by credible evidence; and,

- vii. The right that all twelve (12) jurors must unanimously agree that I am guilty beyond a reasonable doubt before a verdict of guilty can be rendered against me, and that if I am convicted, I have a right to appeal that guilty verdict to the Supreme Court of Mississippi and/or Mississippi Court of Appeals.

I understand that a plea of guilty gives up all of the above and other rights I may have in this matter.

2. I also understand that the decision regarding sentencing is completely within the sole discretion of the Circuit Court Judge. Prior to the entry of my plea, there will be a plea conference between my attorney, the district attorney, and the Circuit Judge at which time the State and the defense will advise the Court whether both sides will execute a Position on Sentencing recommendation included herein to submit to the Judge who will consider any recommendations in it. Judge McDonald uses this procedure. THIS PROCEDURE IS NOT PLEA BARGAINING AND THE RECOMMENDATIONS, EVEN IF ACCEPTED BY BOTH STATE AND DEFENSE, DO NOT CONSTITUTE A PLEA CONTRACT OR AGREEMENT. THE JUDGE HAS NO PART IN FORMULATING THESE RECOMMENDATIONS OR IN PLEA BARGAINING AND RESERVES THE RIGHT TO IMPOSE THE SENTENCE HE OR SHE FEELS IS JUST REGARDLESS OF THE RECOMMENDATIONS. SHOULD BOTH SIDES AGREE ON A SENTENCE RECOMMENDATION, THE JUDGE WILL TELL THE DEFENDANT IF THE JUDGE CANNOT ACCEPT THE RECOMMENDATION PRIOR TO ENTRY OF THE PLEA AND THE DEFENDANT CAN THEN PROCEED TO TRIAL. IF THE DEFENDANT ENTERS AN OPEN PLEA/BLIND PLEA, THE COURT WILL ORDER A FULL PRESENTENCE INVESTIGATION AND THE DEFENDANT WILL NOT BE ALLOWED TO WITHDRAW HIS/HER PLEA. A SENTENCING HEARING WILL BE HELD WHERE THE DEFENSE, STATE, AND VICTIM(S), IF ANY, MAY HAVE INPUT ON THE SENTENCING.

3. Is this a crime in which the sentence must be served day for day under § 47-7-3 of the Mississippi Code of 1972, as amended? ☐ Yes ☐ No

4. Is the Defendant a Habitual Offender who must serve the maximum sentence day for day under § 99-19-81 of the Mississippi Code of 1972? ☐ Yes ☐ No

5. Is the Defendant a Habitual Offender who must serve a sentence of life imprisonment day for day under § 99-19-83 of the Mississippi Code of 1972? ☐ Yes ☐ No

6. By way of notification, the Defendant is advised that if the Defendant is an illegal/undocumented alien or a foreign national who has overstayed his/her work, education, or other permit to live in the United States, the Defendant may be deported as a consequence of a guilty plea to a felony. ☐ Yes ☐ No

7. The Defendant ☐ agrees or ☐ disagrees with the recommendation of the State. If the Defendant does not agree with the below recommendation of the State as to the sentence, the Defendant will enter a blind plea, and the Defendant recommends a sentence of:

_____.

8. If there is a dispute as to the amount of restitution, the Defense recommends \$_____.

9. _____ (Attorney's Initials) The Defense attorney certifies that he/she has explained the recommendation and Position on Sentencing to the Defendant, and the Defendant understands it.

10. _____ (Defendant's Initials) The Defendant certifies that he/she understands the recommendation.

11. The Defendant understands that the Judge can accept or reject all or part of the recommendation regarding the plea and sentence and that there will be a plea conference with the State, Defendant's attorney, and court personnel prior to the entry of any plea. ☐ Yes ☐ No

KNOWING AND UNDERSTANDING THE CONSTITUTIONAL GUARANTEES SET FORTH ABOVE, I HEREBY WAIVE THOSE GUARANTEES AND RENEW MY DESIRE TO ENTER A PLEA OF GUILTY AND SUBMIT THE RECOMMENDATION ON SENTENCING SET OUT ABOVE.

12. I also understand that if I plead "GUILTY" the Court may impose the same punishment as if I had pled "NOT GUILTY," stood trial, and been convicted by a jury of my peers.

13. I know that if I plead "GUILTY" to this charge, the possible sentence is:

CAUSE NO.	COUNT	MIN. YEARS	MAX. YEARS	MIN. FINE	MAX. FINE

And assessments of no more than \$10,000.00, if applicable, as agreed to by the Defendant in the Position on Sentencing section of this form. Defendant represents to the Court by execution of this Petition to Plead Guilty that Defendant is able to pay and will be able to pay these amounts as set out as installments because Defendant is not physically, mentally, or emotionally unable to work and has the professional, vocational, or technical experience needed to work and pay these amounts. Defendant will notify the Circuit Clerk if Defendant's financial circumstances change within thirty (30) days of such change for a hearing before the Court to ask for a modification of installments.

Check the box and initial in the blank if applicable:

- (A) _____ I also know that the sentence is up to the Court and that the Court is not required to carry out any recommendation made by me and my attorney or the District Attorney. I further understand that the Court is not required to follow the recommendation of the District Attorney, if any. If the Court does not accept the plea recommendation, my attorney shall advise me prior to my plea.
- (B) _____ If I enter a blind plea, both the District Attorney and I shall have the opportunity to present testimony and evidence at a sentencing hearing, as well as make a recommendation of sentence to the Court.

14. I ☐ **have** or ☐ **have not** been previously convicted of one or more felonies as follows (List all felonies. *Attach additional pages as necessary*):

15. _____ I understand that this plea will not necessarily dispose of any pending misdemeanor charges that I may have.

16. I ☐ **am** or ☐ **am not** presently on probation, parole, house arrest, Drug Court, or non-adjudication. I understand that my pleading guilty in this case may cause a revocation of my probation, parole, post release sentence, or cause adjudication and sentencing on my non-adjudication. I also understand that pleading guilty could result in a sentence being imposed which had been suspended in that/those case(s). I further understand that if I plead guilty, my sentence may be consecutive to, or in addition to, any sentence I am currently serving depending on the recommendation of the State or the decision of the Court. I understand that if I am on House Arrest, I could be reclassified by the Mississippi Department of Corrections and serve my sentence incarcerated.

17. I am _____ years of age. I have attended school up to and including the _____ grade. I am able to read and write English. My physical, mental, and emotional health is good. At this time, I am not under the influence of any drugs or intoxicants, either legal or illegal. I fully understand what is happening in the courtroom and these proceedings, and I am able to consult with my attorney.

18. Other than the recommendation made by the state if any, I declare that no officer or agent of any branch of government (federal, state, or local) has made any promise or suggestion of any kind to me, or within my knowledge, to anyone else that I will receive a lighter sentence, or probation, or any other form of leniency if I plead "GUILTY," except for the state's recommendation on sentencing if any at all was made.

19. I believe that my attorney has done all that anyone could do to counsel, advise, and assist me on this charge. I am satisfied with the advice and help he/she has given me. I understand and recognize that if I have been told by my attorney that I might receive probation or a light sentence, that this is merely his or her guess and is not binding on the Court, the Department of Corrections, or the Parole Board, because I know that my attorney does not know what the sentence will be, how long I will serve, or anything else about my sentence. I am not basing my decision to plead guilty on any such prediction, if any.

20. By way of disclosure, Judge McDonald was an Assistant District Attorney and the elected District Attorney for the 15th Circuit Court District from January 1984 until December 2006. I understand that if Judge McDonald personally prosecuted me in the trial of a case in the 15th Circuit Court District during that period of time which same cause number comes before him again for some reason or is remanded to him by the appellate courts, then Judge McDonald will recuse himself from my case.

21. I plead "GUILTY" and request that the Court accept my plea of "GUILTY" and enter my plea of "GUILTY" on the basis of my involvement in the crime as stated in my Indictment or Information, based upon discovery I received from the State, what I know about my case, what my attorney has told me about the law and elements of my charge, and because I am "GUILTY."

22. _____ I OFFER MY PLEA OF "GUILTY" FREELY, INTELLIGENTLY, KNOWINGLY, AND VOLUNTARILY AND OF MY OWN ACCORD AND WITH FULL UNDERSTANDING OF ALL THE MATTERS SET FORTH IN THE INDICTMENT OR INFORMATION, THIS PETITION TO PLEAD "GUILTY," AND IN THE CERTIFICATE OF MY ATTORNEY, WHICH FOLLOWS.

23. I certify that no one can accurately estimate how much time of my sentence, if any, I must serve before becoming eligible for any type of release, and I understand such procedures come within the sole discretion of the Department of Corrections, the Parole Board, and/or the Office of the Governor and Legislature of the State of Mississippi, and not within the jurisdiction of the court system; therefore, my attorney or the Court cannot estimate prior to my plea where or how much of my sentence will be served or when I will be eligible for parole or early release.

24. Check and initial if applicable:

- (A) _____ I understand that if I am pleading GUILTY to a violation of any offense defined in the Uniform Controlled Substances Law, Mississippi Code Annotated Section 41-29-101, et seq., my right to operate a motor vehicle over the highways of the state of Mississippi may be suspended for a period of six (6) months from the date of conviction, and that I shall forfeit my driver's license to this Court.
- (B) _____ I understand that if there is an immigration issue or a contested immigration issue as to my citizenship status, then my rights may be affected by a guilty adjudication and I may be deported.
- (C) _____ I understand that if I am pleading guilty to an offense defined as a "sex offense" under Mississippi Code Ann. Section 45-33-23, that I will be required to register as a sex offender in the State of Mississippi within the time and manner set out in Mississippi Code Ann. Sections 45-33-25 and 45-33-31, and that if I fail to comply with these registration requirements, I may be charged and punished as set out in Mississippi Code Ann. Section 45-33-1, et seq.

- (D) _____ I understand that felony convictions can affect future sentences in criminal cases and subject me to sentencing as a second and subsequent offender; a fourth or subsequent offender in DUI cases; a habitual offender, requiring me to serve the maximum sentence day for day, under one habitual offender statute [the little habitual]; or life without parole under another habitual offender statute [the big habitual] if a crime of violence is involved as set out in the habitual offender statute.

25. I understand that if I am placed on non-adjudication, post release supervision, Drug Court, or house arrest, my sentence will be suspended based on my performance of the following conditions. I also understand that my Order of Conviction may set out additional conditions. I shall:

- (a) Commit no offense against the laws of this or any other state of the United States, or the laws of the United States;
- (b) Avoid injurious or vicious habits and persons and places of disreputable or harmful character, such as bars, lounges, gambling dens, and places where illegal drugs are used;
- (c) Report to the Field Agent (Probation Officer) as directed, but no less than once every 30 days;
- (d) Permit the Field Agent to visit the defendant at home, work, or anywhere else;
- (e) Work faithfully at suitable employment so far as possible and advise my Field Officer every 30 days of whether or not I am working;
- (f) Remain within a specified area, to-wit: State of Mississippi, unless given permission by the Mississippi Department of Corrections to travel outside the State;
- (g) Support his or her dependents, if any;
- (h) Possess or consume no alcoholic beverages or mood altering/illegal drugs, and possess no firearm or other deadly weapon, or live in a residence where any are present;
- (i) Have no contact with the witness(es) or victim(s) in this case.
- (j) Pay the required supervision fee during each month of probation, by money order, to the Mississippi Department of Corrections;
- (k) Submit, as provided in Section 47-5-603 of the Mississippi Code of 1972, to any type of breath, saliva or urine chemical analysis test, the purpose of which is to detect the possible presence of alcohol or substance prohibited or controlled by any law of the State of Mississippi or the United States, or to tests recommended by his or her Field Officer;
- (l) Participate in any recognized program available and recommended by his or her Field Officer for drug addiction, alcoholism, anger management, pedophilia, or any other condition for which the Defendant needs treatment;
- (m) Defendant shall attend Alcoholics\Narcotics Anonymous meetings, the ACTS Program, or any other recommended program at the direction of his or her Field Officer;
- (n) Pay all fines and assessments to the Circuit Clerk in the installment amount ordered at the time ordered;

- (o) Defendant shall not be out in the public after the hours of 11 o'clock p.m. through 6 o'clock a.m., unless it pertains to his or her employment.

The violation of any one of the above enumerated conditions shall violate the terms and conditions of the Defendant's suspended sentence and result in his or her revocation and imprisonment.

WITNESS MY SIGNATURE, this the _____ day of _____, 20____.

DEFENDANT

SOC. SEC. NO.

DATE OF BIRTH

ADDRESS

AFFIDAVIT

BEFORE ME, the undersigned authority in and for said County and State, this day personally came and appeared _____ Affiant who, being by me first duly sworn as the law directs, say on oath that Affiant has read the above Petition to Enter Plea of Guilty and that everything contained therein is true and correct and further that his/her attorney has completely and thoroughly gone over said Petition to Enter Plea of Guilty with him or her by reading and fully explaining it to him/her.

AFFIANT further states that he/she fully understands everything contained in the above document and that his/her plea of Guilty is made by him/her freely, knowingly, intelligently, and voluntarily.

AFFIANT understands that any false statement made by him/her about a material matter in this document could subject him/her to prosecution for perjury.

WITNESS MY SIGNATURE, this the ____ day of _____, 20____.

DEFENDANT/AFFIANT

SWORN TO AND SUBSCRIBED before me, on this the _____ day of _____, 20____.

CIRCUIT CLERK

POSITION ON SENTENCING

The State of Mississippi and the Defendant make the following recommendations on the sentencing of (Name):_____.

1. The State recommends a guilty plea to the following charge(s):

<u>CAUSE NO.</u>	<u>CODE SECTION</u>	<u>CHARGE</u>	<u>COUNT</u>

2. And a sentence of (please print):

3. The State recommends that the sentence(s) run ☐ **consecutively** or ☐ **concurrently** to Defendant's sentence in _____ County Cause Number _____.

4. The State moves to *Nolle Prose* or not proceed with the following charge(s):

<u>CAUSE NO./ITEM NO.</u>	<u>CHARGE</u>	<u>COUNT</u>	<u>AGENCY</u>

5. And the State recommends the following restitution:

<u>AMOUNT</u>	<u>VICTIM</u>	<u>VICTIM'S ADDRESS</u>

6. The State recommends the following statutory assessments (**CHECK APPLICABLE BOXES AND ALL BLANKS MUST BE FILLED IN**):

- ☐ \$_____ Fine (statutory minimum of \$1000.00)
☐ \$1,000.00 assessment to the Public Defender's Fund;
☐ \$150.00 assessment to the Court Improvement Fund;
☐ \$250.00 assessment to the DA Investigative Fund;
☐ \$_____ assessment to (law enforcement agency) _____;
☐ \$_____ for _____;
☐ \$_____ Mississippi Crime Victims Compensation Fund;
 and together with all costs of Court.

The Defendant agrees to pay the total amount of fines, fees, assessments, and/or restitution at the minimum rate of \$_____ per month, beginning on the first day of the month following 30 days from the date of the Order of Conviction or Defendant's release from prison, whichever occurs last.

7. The State certifies that in crimes involving the infliction or threat of physical injury, sexual offenses, spousal abuse or domestic violence, it has made reasonable efforts to confer with the victim about the requested plea and to give the victim notice of the plea proceeding, including the offense to which the defendant will plead guilty, the date of the plea, the terms of any sentence agreed to as part of the negotiated plea, and that the victim has a right to be present at said plea hearing as required in Miss. Code Annotated Section 99-43-27.

With respect to all cases that do not fall under § 99-43-1 et seq., the State advises the Court that it has contacted, or attempted to contact, the victim in this matter or discussed restitution with the appropriate law enforcement agency.

8. Although not required to do so by law, the State advises the Court that it has considered any suggestion of sentencing by the appropriate law enforcement agency, if so made.

9. The State understands that the Judge can accept or reject all or part of the recommendation regarding the plea and sentence and that there will be a plea conference with the State, Defendant's attorney, and court personnel prior to the entry of any plea.

THE STATE OF MISSISSIPPI ACKNOWLEDGES MAKING THE PLEA RECOMMENDATION CONTAINED HEREIN ABOVE AND THOSE ITEMS IN PARAGRAPHS 1 THROUGH 9 OF THE POSITION ON SENTENCING SECTION ONLY.

Dated this the _____ day of _____, 20_____.

DISTRICT ATTORNEY OR ASSISTANT DISTRICT ATTORNEY

DEFENDANT

DEFENDANT'S ATTORNEY

CERTIFICATE OF COUNSEL

The undersigned, as Attorney and Counselor for the above Defendant, hereby certifies:

1. I have read and fully explained to the Defendant the allegations contained in the indictment or information in this case;

2. To the best of my knowledge and belief, the statements, representations, and declarations made by the Defendant in the foregoing Petition are in all respects accurate and true;

3. I have explained the maximum and minimum penalties for each count to the defendant and consider him/her competent to understand the charges against him/her and the effect of his/her petition to enter a plea of "GUILTY;"

4. The plea of "GUILTY" offered by the Defendant in this Petition accords with my understanding of the facts he/she related to me and is consistent with my advice to the Defendant;

5. In my opinion, the plea of "GUILTY" as offered by the Defendant in this Petition is freely, intelligently, knowingly, and voluntarily made. I recommend that the Court accept the plea of "GUILTY;"

6. Having discussed this matter carefully with the Defendant, I am satisfied, and I hereby certify, in my opinion, that he/she is mentally and physically competent; there is no mental or physical condition of which I know that would affect his/her understanding of these proceedings; further, I state that I have no reason to believe that he/she is presently operating under the influence of drugs or intoxicants;

7. I have not promised or stated to the Defendant that he/she will receive any particular sentence nor have I speculated with him/her on how much time or percentage of any sentence he/she will have to serve before becoming eligible for any type of release from custody by any means or methods, except for in paragraphs 3 through 5 for the day for day crimes.

Signed by me in the presence of the above-named Defendant and after full discussion of the contents of this certificate with the defendant, this the ____ day of _____, 20____.

ATTORNEY FOR DEFENDANT