

## ALFORD PLEA <sup>1</sup>

*Note: An Alford plea requires "strong" evidence of guilt and a demonstrated "rational choice." The defendant must be "aware of the nature and character of an Alford plea," and at the least should be asked if he wishes to plead guilty to the crime "to avoid the risk of conviction upon a trial of the more serious crime...." (People v Hill, 16 NY3d 811, 814 [2011]). Accordingly, in addition to the normal plea colloquy set forth in Model Colloquies, the following procedure and questions substitute for the section on the "Factual Basis and Plea":*

(1) Place the following information on the record:

The evidence of guilt.

The reason the defendant is not acknowledging factual guilt of the crime or an element of thereof.

The reason the defendant is nonetheless entering a plea of guilty. E.g., The defendant is entering the plea to avoid the risk of conviction upon a trial of a more serious offense and/or of an offense for which he/she could [would] receive a more severe sentence.

(2) In lieu of eliciting a factual basis for the plea, proceed as follows:

To the defendant:

You are pleading guilty to (specify), a class (specify letter classification, and relevant other classification, e.g. violent felony) [under the (specify) count of the (information / superior court information / indictment)].

Under that count, it is charged that on or about (date) in the County of (specify), you (specify pertinent allegations). Do you understand?

By your plea of guilty, you will stand convicted of that crime and face the same consequences that attach to any conviction of an offense.<sup>2</sup> Do you understand?

Do you plead guilty to (specify name of the offense)?

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<sup>1</sup>. *North Carolina v Alford*, 400 US 25 (1970).

<sup>2</sup>. See *Matter of Silmon v Travis*, 95 NY2d 470, 477 (2000) (Parole Board may deny parole to a person convicted of a felony by an *Alford* plea on the grounds that the inmate did not accept responsibility for his criminal conduct); *People v Miller*, 91 NY2d 372, 378 (1998) (a conviction by an *Alford* plea may be used to impeach the person who took the plea); *Matter of Hopfl*, 48 NY2d 859, 860 (1979) (a conviction by an *Alford* plea may be used to disbar an attorney); *People v Geier*, 144 AD2d 1015, 1016 (4th Dept 1988) (a prior felony conviction by an *Alford* plea may serve as a predicate conviction for multiple felony offender sentence).