

Plea bargaining

Plea bargaining involves negotiations between the defendant, through an attorney usually, and the prosecutor as to the conditions under which the defendant will enter a guilty plea.

All plea bargaining requires that the judge ask the defendant the following four questions---

- 1) Do you understand the charges against you and the maximum penalties authorized by law?
- 2) Are you, in fact, guilty of the charge you are pleading guilty to?
- 3) Are you pleading guilty voluntarily?
- 4) Do you understand that you have the right to a trial by jury and that you are waiving that right?

There is no statutory grounding for plea bargaining----

It derives from case law only-----

Brady v. U.S. 742, 397 US 742 (1970) which states a guilty plea cannot be later retracted on the grounds that some fear of a possible death penalty induced an involuntary admission of guilt as a part of a plea bargain

The Alford plea

The defendant maintains his or her innocence, on record, but pleads guilty because he or she concedes that there is enough evidence to be convicted if a trial would be held.

Plea bargaining variations

1) Pleading down the severity of the criminal charge

(e.g., first degree murder to second degree Murder)

2) Traffic Court

(e.g., the attorney charges the client \$100.00 to negotiate a speeding ticket be adjusted to a non-moving violation such as having a burned-out headlight and thereby avoid suffering point penalties that would result in the possible suspension of their driving license.)

3) Cooperation with the government

(e.g., defendant agrees to trade testimony against a bigger fish criminal in return for a reduced conviction or total immunity from any conviction)