

EXPLANATION OF RIGHTS AND PLEA OF GUILTY

(Habitual Felony Offender – Circuit or District Court)
(FOR OFFENSES COMMITTED BEFORE JUNE 1, 2006)

Case Number _____

Count _____
(count #, if applicable)

IN THE _____ COURT OF _____, ALABAMA
(Circuit or District) (Name of County)

STATE OF ALABAMA v. _____
Defendant

TO THE ABOVE-NAMED DEFENDANT: After the Court was informed that you wish to enter a plea of guilty in this case, this is to inform you of your rights as a criminal defendant.

PENALTIES APPLICABLE TO YOUR CASE

You are charged with the crime of _____, which is Class _____ Felony. The Court has been informed that you desire to enter a plea of guilty to this offense or to the crime of _____ which is a _____ Felony. The sentencing range for the above crime(s) is set out below:

FELONY	
Class A	Not less than ten (10) years and not more than ninety-nine (99) years imprisonment in the state penitentiary, including hard labor and may include a fine not to exceed \$20,000.
Class B	Not less than two (2) years and not more than twenty (20) years imprisonment in the state penitentiary, including hard labor and may include a fine not to exceed \$10,000. For imprisonment not more than 3 years, confinement may be in county jail and sentence may include hard labor for county.
Class C	Not less than one (1) year and one (1) day and not more than ten (10) years imprisonment in the state penitentiary, including hard labor and may include a fine not to exceed \$5,000. For imprisonment not more than 3 years, confinement may be in county jail & sentence may include hard labor.

You will also be ordered to pay the costs of court, which may include the fees of any appointed attorney, and restitution if there is any. You will also be ordered to pay an additional monetary penalty for the use and benefit of the Alabama Crime Victims Compensation Commission of not less than \$50 and not more than \$10,000 for each felony for which you are convicted.

As a reported habitual offender, you are further advised that the Alabama Habitual Offender Act, Section 13A-5-9, Ala. Code 1975, as amended by Act 2000-759, provides the following enhanced punishment for anyone who has been previously convicted of one or more felonies and who then is convicted of a subsequent felony:

Prior Felonies This offense →	No Prior Felonies	One Prior Felony	Two Prior Felonies	Three + Prior Felonies
Class C Felony	1 Yr. & 1 Day – 10 Years In State Penitentiary Fine Up To \$5,000	2 – 20 Years In State Penitentiary Fine Up To \$10,000	10 – 99 Years In State Penitentiary Fine Up To \$20,000	15 – 99 Years or Life In State Penitentiary Fine Up To \$20,000
Class B Felony	2 – 20 Years In State Penitentiary Fine Up To \$10,000	10 – 99 Years Or Life In State Penitentiary Fine Up To \$20,000	15 – 99 Years or Life In State Penitentiary Fine Up To \$20,000	Mandatory Life Imprisonment or any term of not less than 20 years Fine Up To \$20,000
Class A Felony (No Prior convictions for a Class A Felony)	10 – 99 Years or Life In State Penitentiary Fine Up To \$20,000	15 – 99 Years or Life In State Penitentiary Fine Up To \$20,000	Life imprisonment or Any Term Of Years Not Less Than 99 Fine Up To \$20,000	Mandatory Imprisonment For Life or Life Imprisonment Without Possibility of Parole. Fine Up To \$20,000
Class A Felony (One or more prior convictions for any Class A Felony)	10 – 99 Years or Life In State Penitentiary Fine Up To \$20,000	15 – 99 Years or Life In State Penitentiary Fine Up To \$20,000	Life Imprisonment or Any Term Of Years Not Less Than 99 Fine Up To \$20,000	Mandatory Imprisonment For Life Without Possibility of Parole Fine Up to \$20,000

This crime is also subject to the following enhancements or additional penalties as provided by law: (Provisions Checked Apply To Your Case)

Enhanced Punishment For Use of Firearm Or Deadly Weapon: Section 13A-5-6, Ala. Code 1975, provides for sentence enhancement where a "firearm or deadly weapon was used or attempted to be used in the commission of a felony." This section provides for the following punishment in such event: For the commission of a Class A Felony, a term of imprisonment of not less than 20 years; for the commission of a Class B or Class C Felony, a term of imprisonment of not less than 10 years.

Enhanced Punishment for a Felony Criminal Sex Offense Involving a Child: Sections 13A-5-6 (a) (4) and (a) (5), Ala. Code 1975, provide for the enhancement of a punishment for a Class A or B felony criminal sex offense involving a child under the age of 12 or involving child pornography. These Sections provide for the following punishment in such events: For a Class A felony criminal sex offense, not less than 20 years; For a Class B felony sex offense, not less than 10 years.

Enhanced Punishment for Drug Sale Near School: Section 13A-12-250, Ala. Code 1975, provides that any person who is convicted of unlawfully selling any controlled substance within a three (3) mile radius of a public or private school, college, university or other educational institution, must be punished by an additional penalty of five years imprisonment in a state correctional facility for each violation. This period of imprisonment is mandatory and the punishment imposed shall not be suspended or probation granted.

Enhanced Punishment for Drug Sale Near Housing Project: Section 13A-12-270, Ala. Code 1975, provides that any person who is convicted of unlawfully selling any controlled substance within a three (3) mile radius of a public housing project owned by a housing authority must be punished by an additional penalty of five years' imprisonment in a state correctional facility for each violation. This period of imprisonment is mandatory and punishment imposed shall not be suspended or probation granted.

Enhanced Punishment For Sales Of Controlled Substance To Anyone Under 18: Section 13A-12-215, Ala. Code 1975, provides that any person convicted of selling, furnishing, or giving away a controlled substance to one who has not yet attained the age of 18 years, shall be guilty of a Class A Felony and the punishment imposed shall not be suspended or probation granted.

Drug Demand Reduction Assessment Act and Loss of Driving Privileges: Section 13A-12-281, Ala. Code 1975, provides that, if any person convicted of a violation of §13A-12-202 (criminal solicitation to commit controlled substance crime), 13A-12-203 (attempt to commit a controlled substance crime), 13A-12-204 (criminal conspiracy), 13A-12-211 (unlawful distribution of a controlled substance), 13A-12-212 (unlawful possession or receipt of a controlled substance), 13A-12-213 (unlawful possession of marijuana, 1st), 13A-12-215 (sale, furnishing, etc., of controlled substance by person over age

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18 to person under age (18) or 13A-12-231(drug trafficking), Ala.Code 1975, the person shall be assessed an additional fee of \$1,000 if he or she is a first-time offender or \$2,000 if he or she is a repeat offender under one of these sections. Collection of all or part of the penalty will be suspended if, with court approval, the defendant enters a drug rehabilitation program and if the defendant agrees to pay for a part or all of the program costs. Upon successful completion of the program, the defendant may apply to the court to reduce the penalty by the amount actually paid for participation in the program. Any suspension of the penalty can be withdrawn by the court if the defendant fails to enroll in or successfully pursue or otherwise fail to complete an approved program. In addition, pursuant to Section 13A-12-214 (unlawful possession of marijuana in the second degree), Section 32-5A-191(a)(3) or Section 32-5A-191(a)(4)(DUI offenses involving drugs), the defendant will lose his or her privilege to drive a motor vehicle for a period of six months, which shall be in addition to any suspension or revocation otherwise provided by law.

Alcohol/Drug Related Offenses: If the person is convicted of an alcohol or drug-related offense, he or she will be required to undergo an evaluation for substance abuse. Based upon the results of any such evaluation, the person will be required to complete the recommended course of education and/or treatment and to pay for the evaluation and any cost of program to which he or she is referred. Failure to submit to an evaluation or failure to complete any program to which he or she may be referred will be considered a violation of any probation or parole he or she may be granted. The person may also be required to attend monitoring sessions, including random drug and alcohol testing or blood, urine and/or breath tests and to pay a fee for this service. The person may request a waiver of part of all of the fees assessed if he or she is indigent or for any portion of time he or she is financially unable to pay. Community service may be ordered by the court in lieu of the monetary payment of fees.

DNA Samples for Criminal Offenses in §36-18-24: Section 36-18-25(e), Ala. Code 1975, provides that all persons convicted of any of the offenses set out in Section 36-18-24 (felony offense or any offense contained in Chapter 6 of Title 13A - offenses involving danger to the person - or attempt, conspiracy, or solicitation thereof), shall be ordered by the court to submit to the taking of a DNA sample or samples.

Drug Possession: If any person is convicted in any court of this state for drug possession, drug sale, drug trafficking, or drug paraphernalia offenses as defined in Section 13A-12-211 to 13A-12-260, inclusive, Ala. Code 1975, an additional fee of \$100.00 will be assessed pursuant to Section 36-18-7, Ala. Code 1975.

Other: _____

RIGHTS YOU HAVE AND WAIVER OF YOUR RIGHTS

Under the Constitution of the United States and the Constitution and laws of the State of Alabama, you have a right to remain silent and you may not be compelled to give evidence against yourself. Your attorney cannot disclose any confidential talks he/she has had with you. You are not required to answer any questions. If you do answer questions knowing that you have a right to remain silent, you will have waived this right.

You have the right to enter, and continue to assert, a plea of "Not Guilty" or "Not Guilty by Reason of Mental Disease or Defect", and have a public trial before a duly selected jury. The jury would decide your guilt or innocence based upon the evidence presented before them. If you elect to proceed to trial, you would have the right to be present, you would have the right to have your attorney present to assist you, you would have the right to confront and cross examine your accuser(s) and all the State's witnesses, you would have the right to subpoena witnesses to testify on your behalf and to have their attendance in court and their testimony required by the court, and you would have the right to take the witness stand and to testify, but only if you chose to do so, as no one can require you to do this. If you elect to testify, you can be cross examined by the State, just as any other witness is subjected to cross examination. If you decide not to testify, no one but your attorney will be allowed to comment about that fact to the jury. Your attorney is bound to do everything he/she can honorably and reasonably do to see that you obtain a fair and impartial trial.

If you elect to proceed to trial, you come to court presumed to be innocent. This presumption of innocence will follow you throughout the trial until the State produces sufficient evidence to convince the jury (or the court if the trial is non-jury) of your guilt beyond a reasonable doubt. You have no burden of proof in this case. If the State fails to meet its burden, you would be found not guilty. If you are entering a guilty plea to a charge for which you have not yet been indicted, you are waiving indictment by a grand jury and you will be pleading guilty to a charge preferred against you by a District Attorney's Information filed with the court.

Pursuant to Section 15-22-27.3, Ala. Code 1975, if you are pleading guilty to a sex offense involving a child as defined in Section 15-20A-4, Ala. Code 1975, which constitutes a Class A or B felony, you will not be eligible for parole.

IF YOU PLEAD GUILTY, THERE WILL BE NO TRIAL. YOU WILL BE WAIVING THE RIGHTS OUTLINED ABOVE, EXCEPT YOUR RIGHTS RELATING TO REPRESENTATION BY AN ATTORNEY. THE STATE WILL HAVE NOTHING TO PROVE, AND YOU WILL BE CONVICTED AND SENTENCED BASED ON YOUR GUILTY PLEA. BY ENTERING A PLEA OF GUILTY, YOU WILL ALSO WAIVE YOUR RIGHT TO APPEAL, UNLESS (1) YOU HAVE, BEFORE ENTERING THE PLEA OF GUILTY, EXPRESSLY RESERVED THE RIGHT TO APPEAL WITH RESPECT TO PARTICULAR ISSUE OR ISSUES, IN WHICH EVENT APPELLATE REVIEW SHALL BE LIMITED TO A DETERMINATION OF THE ISSUE / ISSUES RESERVED, OR THE WITHDRAWAL IS NECESSARY TO CORRECT A MANIFEST INJUSTICE, & THE COURT HAS DENIED YOUR MOTION TO WITHDRAW YOUR PLEA, OR THE MOTION HAS BEEN DEEMED DENIED BY OPERATION OF LAW.

IF YOU HAVE A RIGHT TO APPEAL UNDER ONE OF THE CONDITIONS ABOVE AND YOU ARE DETERMINED BY THE COURT TO BE INDIGENT, COUNSEL WILL BE APPOINTED TO REPRESENT YOU ON APPEAL IF YOU SO DESIRE AND IF THE APPEAL IS FROM A CIRCUIT COURT JUDGMENT OR SENTENCE, A COPY OF THE RECORD AND THE REPORTER'S TRANSCRIPT WILL BE PROVIDED AT NO COST TO YOU.

IF YOU HAVE ANY QUESTIONS ABOUT YOUR RIGHTS OR THE CONSEQUENCES OF PLEADING GUILTY, PLEASE LET THE COURT KNOW NOW AND FURTHER EXPLANATION WILL BE MADE.

Date

Judge

ATTORNEY'S CERTIFICATE

I certify that the above was fully read and / or explained to the defendant by me; that I explained the penalty or penalties involved with the defendant; that I discussed in detail the defendant's rights and the consequences of pleading guilty; and that, in my judgment, the defendant understands the same and that he/she is knowingly, voluntarily, and intelligently waiving his/her rights and entering a voluntary and intelligent plea of guilty. I further certify to the court that I have in no way forced or induced the defendant to plead guilty and to my knowledge no one else has done so.

Date

Attorney

DEFENDANT'S STATEMENT OF WAIVER OF RIGHTS AND PLEA OF GUILTY

I certify to the court that I have read the matters set forth above or have had them read to me; that my rights have been discussed with me in detail and fully explained; that I understand the charge or charges against me; that I understand my rights, the punishment or punishments provided by law as they may apply to my case, and I understand the consequences of pleading guilty; that I am not under the influence of any drugs, medicines, or alcoholic beverages; and I have not been threatened or abused or offered any inducement, reward, or hope of reward to plead guilty other than the terms of the plea agreement which will be stated on the record.

I further state to the court that I am guilty of the charge to which I am entering a plea of guilty, that I desire to plead guilty, that I made up my own mind to plead guilty, and that I knowingly, intelligently, and voluntarily waive my right to a trial in this case. I further state to the court that I am satisfied with my attorney's services and his/her handling of my case.

Date

Defendant