



## MARTINE LAW TRAINING UPDATE



### ***NORGAARD* PLEA OF GUILTY (Unable to Recall Facts) Three Steps to Making a Proper Record**

**QUESTION: What Is a '*Norgaard*' Plea of Guilty and What Procedure Must the District Court Follow Before a '*Norgaard*' Plea Can Be Accepted?**

A *Norgaard* Plea is a procedure that governs situations where a defendant wants to enter a plea of guilty (usually to take advantage of a plea agreement) but is unable to recall facts due to intoxication or amnesia. Unlike an *Alford* plea (see recent update 25-7) in a *Norgaard* plea, defendant does not make a claim he is innocent. *State v. Ecker*, 524 N.W.2d 712, 716 (Minn.1994);

otherwise, the same legal standard applies for either a *Norgaard* or an *Alford* guilty plea. *State v. Johnson*, 867 N.W.2d 210, 217 n.1 (Minn. App. 2015).



### **Minnesota Supreme Court Caution**

Although the following Supreme Court quote refers to an *Alford* plea of guilty, the same standard also applies to a *Norgaard* plea of guilty. *Id.* at 217 n.1.

The [district] court should not “cavalierly accept” an *Alford* plea, that such pleas should only be accepted if they are “voluntary and represent...a knowing and intelligent choice of the alternative courses of action available,” and that the factual basis inquiry is “essential to the determination of this issue.” *State v. Theis*, 742 N.W.2d 643, 648 (Minn. 2007); *State v. Johnson*, supra at 217 n.1.

## IN-COURT SCRIPT: THREE STEPS TO A VALID NORGAARD PLEA

Make sure defendant has read and signed the Norgaard addendum  
(Minn. R. Crim. P. 15, App. H)

**STEP ONE** The record should explicitly indicate that the defendant is entering a *Norgaard* plea and that the defendant understands what a *Norgaard Plea* is. The following is a sample script that a defense attorney or prosecutor can follow:

“Your Honor, the Defendant intends to enter a *Norgaard plea of guilty* to the charge of [insert charge]. Before proceeding further, I would like to confirm on the record that the Defendant understands what a *Norgaard* plea is, and that this decision is being made voluntarily and intelligently.” (Ask defendant the following 4 questions)

**Question 1:** Mr./Ms. [Defendant’s name], do you understand that a Norgaard plea means you are pleading guilty even though you do not remember the events, and that the court may accept the plea if you agree the state’s evidence would be sufficient to prove you guilty beyond a reasonable doubt at trial?

**Question 2:** Do you understand that by pleading guilty you are giving up your right to a **jury or court trial, and that a jury verdict must be unanimous**; the right to be **presumed innocent** and require proof **beyond a reasonable doubt**; the right to **confront and cross-examine** the State’s witnesses; the right to **subpoena and present** witnesses; the right to **testify or remain silent**; and the right to a **pretrial hearing** to challenge statements and search-and-seizure evidence?

**Question 3:** Have you had enough time to talk with me about this type of plea and the consequences of entering it?

**Question 4:** Are you entering this plea freely and voluntarily, and not because anyone is threatening or forcing you to do so?

**STEP TWO** Defendant should be asked the following 10 questions: Minn. R. Crim. P. 15, App. H (Norgaard Addendum). Make sure defendant has read and signed the Addendum.

- ① Have you read the complaint and police reports in the prosecutor's file?
- ② Do you have any recollection of the events referred to in those reports?
- ③ Were you intoxicated at the time of the events referred to in those reports?
- ④ Do you have any reason to doubt the accuracy of those reports?
- ⑤ Do you understand that if you went to trial the state's witnesses would testify that the following occurred: \_\_\_\_\_:
  - a) Prosecutor summarizes the state's case, including specific statements from the police reports; (See Supreme Court Tip on Best Practice, page four)
- ⑥ Do you believe there is a '**substantial likelihood**' that you will be found guilty, beyond a reasonable doubt, of the offense of \_\_\_\_\_ if the state's evidence is presented against you at trial. (see Minn. R. Crim. P. 15, App. H (Norgaard Addendum).
- ⑦ Are you making any claim that you are innocent? (Answer must be NO).
- ⑧ If the judge accepts your Norgaard guilty plea, you will be convicted of the offense to which you are pleading, and you will be considered just as guilty as if you remembered the circumstances and told the court the facts of the crime. Your lack of memory will not affect the terms and conditions of your sentence, your probation (if any), or any collateral consequences of your conviction.

- 9 Have you read and signed the Norgaard Addendum, including the paragraphs about sentencing, probation conditions, and treatment requirements—do you understand those provisions?” See Minn. R. Crim. P. 15, App. H (Norgaard Addendum).
- 10 (Optional) Are you entering this plea to obtain the benefit of the plea bargain being offered by the prosecutor?

**STEP THREE** The District Court should enter the following finding:

“Based upon the facts offered in support of the plea, the court finds there is sufficient evidence to support a jury verdict of guilty and that the plea is voluntarily, knowingly, and intelligently entered.” *State v. Theis*, 742 N.W.2d 643, 647 (Minn. 2007).

**Supreme Court Tip on Best Practice** In major felony cases, the Supreme Court has recommended that the prosecutor help establish the factual basis by putting something concrete from the file into the record—such as witness statements or, in appropriate cases, abbreviated witness testimony—rather than relying only on a bare summary. *State v. Goulette*, 258 N.W.2d 758, 761 (Minn. 1977).

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