Safeguarding the Alford Plea: Minimizing State-Sanctioned Wrongful Convictions

Zana Molina

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Zana Molina *

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I. INTRODUCTION

The Alford plea is a rarely utilized but widely debated criminal plea.1 The Alford plea is a type of guilty plea where the defendant pleads guilty to avoid further punishment while simultaneously asserting their innocence.2 Alford pleas are most often used in sex offense cases, murders, and domestic violence cases,3 and are entered at higher rates by those charged with serious offenses who are subsequently facing significant prison sentences.4 The Alford plea came to fruition in North Carolina v. Alford where, in an effort to avoid the death penalty on a murder charge, a Judge allowed Alford to enter a plea of "guilty" after testifying under oath that he did not commit the murder and continuing to proclaim innocence throughout trial.5

Defendants generally enter Alford pleas because they believe that the state has enough evidence to convict them during a jury trial, and even though they maintain their innocence throughout the court process, they avoid a harsher charge and/or penalty by taking advantage of the plea offered by the prosecution.6

By accepting an Alford plea, through its representatives on the Court, the State may be allowing a wrongful conviction to knowingly be handed down. Alford pleas are not entered by defendants who wrongfully confess or are found guilty in a court of law beyond a reasonable doubt only to have their convictions overturned by new DNA findings in the future. Instead, these

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5 Diehm, supra note 1, at 30-31.
defendants are proclaiming their innocence, possibly by testifying under oath, but are being told that the evidence against them is so weighted in favor of a guilty jury decision that they must plead guilty to a lesser, though still quite serious, charge to avoid death or a lengthy sentence.\(^7\)

The purpose of this paper is not to state that all Alford pleas are entered by innocent defendants, as that would not be factual. Instead, the purpose of this paper is to discuss the unintended consequences of entering an Alford plea and how those consequences can be mitigated by sharing them with defendants before an Alford plea is accepted. The paper will also provide an exploration of enhanced safeguards courts may implement when accepting Alford pleas to minimize the number of wrongful convictions associated with Alford pleas.

Starting with Part I, I will discuss the origin of the Alford plea, how the Alford plea differs from other guilty and “\textit{nolo contendere}” pleas, as well as the Alford plea’s benefits and criticisms in academia. This section will also provide a brief overview of the two main stages in a case where an Alford plea may be entered by a criminal defendant.

Part II will discuss the different uses and acceptance of the Alford plea in various jurisdictions, including juvenile court, state courts, and federal courts.

Part III will discuss the consequences that follow a defendant’s entry of an Alford plea, including the effect an Alford plea has on postconviction proceedings and civil suits related to the charge where Alford was entered. This section will also outline victim views of the Alford plea and discuss the jurisdictional ban on an Alford pleader’s access to postconviction relief normally reserved for the wrongfully convicted.\(^8\)

In Part IV I will make the case that Alford pleas may lead to state-sanctioned wrongful convictions. Alford pleas are accepted by prosecutors and judges though the defendant asserts their innocence throughout the negotiation process or trial, which makes the State seem complicit in wrongfully convicting innocent people.

\(^7\) Id.
Accepting such wrongful convictions may often prove easier than facing trial for all attorneys involved.

This section will include a brief review of different cases where Alford pleas have been entered by victims of wrongful convictions and will briefly examine their real-life experience seeking post-conviction relief. Most notably, this section will include a review of the case of the West Memphis Three. In this case, three young men were convicted of murder, one of whom was sentenced to the death penalty based on a coerced and recanted confession from one of the young men who had an IQ score of seventy-two. Upon review of the case and pending a second trial based on possible new evidence, the men were given the chance to enter an Alford plea, securing their release after eighteen years of incarceration.

I will conclude with recommendations to combat state-sanctioned wrongful convictions seen alongside Alford pleas, starting with a discussion of a proposed “Alford Hearing” which would be implemented to ensure the standard of proof is met by the prosecutor in the eyes of a judge. Next, a recommendation to send all Alford plea cases to trial will be discussed, so long as the removal of more severe punishment is guaranteed as an outcome of the trial. Either recommendation should be accompanied by in-depth discussion of the unintended consequences of Alford plea convictions on a person’s record before any court accepts a defendant’s Alford plea.

II. PART I: THE ORIGIN OF THE ALFORD PLEA

The “Alford Plea” came to fruition after the case of North Carolina v. Alford was decided by the Supreme Court. In Alford, Henry Alford was charged with first-degree murder, which in North Carolina was then punishable in two main ways: one, by imposition of the death penalty following a jury finding of guilt, or two, by life imprisonment following a guilty plea. In Alford, there were no witnesses to the actual murder, but witnesses stated that Alford had

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9 Vota, supra note 3, at 1007.
10 Vota, supra note 3, at 1005-06.
left his home armed with a firearm, proclaiming that he was going to murder the victim, and returned saying that he had done exactly that. Alford continually asserted his innocence under oath (stating that he was taking the blame for the real murderer), but pleaded guilty in the face of witness testimony stating Alford had left his home during the time of the murder with a gun intending to kill the victim, paired with the likely possibility of a death sentence. Alford then claimed that his plea had been entered based on coercion and fear of the death penalty, and was therefore invalid.

The Supreme Court relied on findings in *Brady*, *Hudson*, and *McCoy* to support the constitutionality of Alford’s entry of a guilty plea to avoid the death penalty. The Court in *Brady* held that a defendant’s guilty plea, when entered knowingly, intelligently, and weighed against the alternatives available through the assistance of competent counsel, was not compelled if entered to avoid the death penalty. The *Alford* Court reasoned that in *Hudson*, it was “implicitly recognized” that the Constitution allows a court to sentence a defendant to prison even when they are unwilling to admit their guilt to a crime if the defendant’s interests support the entry of a guilty plea. The *Alford* Court noted that *Hudson* differed from *Alford* slightly because the defendant did not enter an explicit guilty plea, but instead pled “nolo contendere,” which allowed the court to treat them as guilty and waived their right to trial, though the defendant still did not outright admit guilt. Finally, the *Alford* Court reasoned that in *McCoy*, the United States District Court of Appeals (District of Columbia Circuit) held that an accused person who believes they are innocent may “reasonably

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14 *Alford*, 400 U.S. at 25; Diehm, *supra* note 1, at 28.
15 *Alford*, 400 U.S. at 29.
16 *Id.* at 25.
18 *Alford*, 400 U.S. at 26.
19 *Id.* at 35.
conclude” that a jury might find them guilty and thus the accused may benefit from entering a guilty plea despite their innocence.\textsuperscript{20}

As shown by the \textit{Alford} Court’s interpretation of \textit{Hudson}, there are similar but distinct criminal pleas that lead to significantly different outcomes if entered. The Federal Rules of Criminal Procedure guide the entry of pleas in a court of law, with Rule 11(a) guiding the entry of pleas in criminal cases:

\textbf{In General.} A defendant may plead not guilty, guilty, or (with the court's consent) nolo contendere.

\textbf{(2) Conditional Plea.} With the consent of the court and the government, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right to have an appellate court review an adverse determination of a specified pretrial motion. A defendant who prevails on appeal may then withdraw the plea.\textsuperscript{21}

As stated in the Rule above, the main pleading options available to defendants are guilty, not guilty, and \textit{nolo contendere}.

Guilty pleas are entered in as many as ninety percent of criminal cases\textsuperscript{22} and are entered in cases where the defendant does not contest the charges in question.\textsuperscript{23} If a court accepts a defendant’s guilty plea, many of the rights granted in Rule 11 will be waived, including the right to a jury trial and to confront witnesses in their case.\textsuperscript{24}

This is also the case for a plea of \textit{nolo contendere}. A \textit{nolo contendere} plea allows a person to waive their right to trial and be punished as if they were guilty of the crime in question, though the pleader is not required to admit guilt outright.\textsuperscript{25} According to the Federal Rules of Evidence, \textit{nolo contendere} pleas may not be used

\textsuperscript{20} McCoy v. United States, 363 F.2d 306, 308 (D.C. Cir. 1966); \textit{Alford}, 400 U.S. at 33.
\textsuperscript{21} FED. R. CRIM. P. 11(a).
\textsuperscript{23} \textit{Guilty}, BLACK’S LAW DICTIONARY (11th ed. 2019).
\textsuperscript{24} FED. R. CRIM. P. 11(b)(1)(f).
\textsuperscript{25} Diehm, \textit{supra} note 1, at 33.
against a defendant in a future civil or criminal case. Additionally, certain scholars have interpreted the Court’s decision in Alford as not requiring a factual basis for a *nolo contendere* plea, and this lack of required factual basis has been codified in state statutes and mentioned in state supreme court holdings as well.

Alford pleas, on the other hand, require courts to find a factual basis for the guilty plea even if the person professes their innocence under oath. This factual basis finding may rely on solitary evidence, such as a victim’s testimony. Additionally, Alford pleas are notably absent from the plain language of Rule 11. Alford pleas have, however, been interpreted as guilty pleas under Rule 11 in some jurisdictions.

The main difference between Alford and guilty pleas is the requirement of an admission of guilt accompanying the plea. Guilty pleas are generally comprised of a waiver of a right to trial and an admission of guilt to the crime charged. Conversely, Alford pleas by nature are comprised of a waiver of a right to trial plus a defendant’s profession of their innocence.

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26 *Fed. R. Evid.* 410(a).


29 Schneider, *supra* note 4, at 282.

30 Diehm, *supra* note 1, at 33.


35 *Id.*

36 *Id.*
A. Reasons for Entering Alford Pleas

Defendants may choose to enter Alford pleas for a variety of reasons, including a desire to avoid embarrassment at trial or a desire to gain freedom from incarceration.\(^\text{37}\) Alford pleas may be entered as a perceived necessity after falsely confessing or entered involuntarily due to fear of the death penalty or harsher punishment (as was the case in Alford).\(^\text{38}\) Alford pleas are generally made because the defendant believes the state has enough evidence to convict them during trial, and even though the person entering an Alford plea may be innocent, they would rather have a guarantee of a “short” sentence than risk a longer sentence being imposed, particularly if life in prison or the death penalty are sentencing options for the crime with which they are charged.\(^\text{39}\) Defendants may also enter Alford pleas to less severe charges to take advantage of a prosecutor’s offer to dismiss a more severe charge.\(^\text{40}\)

Defendants who falsely confess may also choose to take Alford pleas because they believe their confession, whether obtained through coercion or other tactics, will make them look guilty in the eyes of the jury.\(^\text{41}\) A mock study which presented “jurors” with differing types of incriminating evidence found that the “jury” was likely to convict the defendant in cases where a confession was given at higher rates than when presented with other evidence.\(^\text{42}\) Entering an Alford plea is also a last resort for many people who may be facing the death penalty. People charged with capital crimes will often enter an Alford plea instead of a “not guilty” plea, which may risk the imposition of the death penalty upon a guilty verdict at trial.\(^\text{43}\)

Alford pleas may generally be entered at two different instances in a case. First, Alford pleas may be entered as part of an


\(^{38}\) Schneider, *supra* note 4, at 283; Muth, *supra* note 34, at 4.

\(^{39}\) Joffrin, *supra* note 6, at 48.

\(^{40}\) Molesworth, *supra* note 31, at 935.

\(^{41}\) Schneider, *supra* note 4, at 286.

\(^{42}\) Id.

\(^{43}\) Id.
initial trial court proceeding if the trial court allows Alford pleadings, a distinction which will be examined in Part II of this paper. Second, Alford pleas may be accepted as pleas when trials are re-granted on appeal. In the case of the West Memphis Three, which will be discussed in Part III in this paper, defendants who spent eighteen years in prison entered Alford pleas after being granted a new trial due to the discovery of possibly exonerating evidence, but before advancing with the retrial to obtain their freedom.44

B. Academic Views of the Alford Plea

Scholars are split between their distaste and acceptance of the Alford plea. Many scholars believe that the Alford plea has far more negatives than positives in its application. Opponents of the Alford plea note that the large amount of discretion given to judges as to whether they will allow Alford pleas in their courtrooms literally results in “life or death” disparities in sentencing.45 For example, despite factual similarities in their cases, one person may be allowed to enter an Alford plea, thereby avoiding the death penalty, while another person who was not allowed to enter an Alford plea could face death penalty consequences.46 Opponents also argue that its use shows that the law gives justice a “back seat to procedural efficiency and freedom of choice.”47 Further, opponents assert that “[e]fficiency should not come at the price of unfair adjudication.”48

Some scholars contend that Alford pleas undermine the justice system by permitting innocent defendants to plead guilty.49 Scholars also believe that agreeing to an Alford plea “undercuts proof beyond a reasonable doubt” by allowing such a pleading from a person who asserts their innocence.50 There is also a belief that

44 Muth, supra note 34.
45 Diehm, supra note 1, at 28.
46 Diehm, supra note 1, at 28.
47 Vota, supra note 3, at 1011.
48 Id. at 1020.
49 Bibas, supra note 37, at 1386.
50 Id. at 1374.
guilty pleas should be entered only by those who confess to the crimes with which they are charged.\textsuperscript{51} Most consequentially, the Alford plea has been criticized because it may lead innocent people to enter the plea to avoid the risk that their assertions of innocence will be doubted during trial.\textsuperscript{52} Major Walburn of the armed forces considered “the most troubling aspect of an Alford plea [to be] the potential to undermine what is arguably the most fundamental underpinning of our criminal justice system: that only the truly guilty are convicted and punished.”\textsuperscript{53}

Proponents of the Alford plea contend that its entry allows for the efficient and inexpensive resolution of cases\textsuperscript{54} allows defendants to avoid embarrassment in trial and allows for the defendant’s “psychological denial” of guilt to be evaded by victims.\textsuperscript{55} For example, if a defendant charged with a sexual crime believes that they may feel far too much shame to admit their crimes in front of a jury of their peers, they may choose to enter an Alford plea. This would allow the victim to avoid hearing the person they believe assaulted them openly deny guilt in front of others, simply to avoid a lengthy sentence. Alford pleas reduce the monetary and emotional costs of trial, and allow defendants to avoid admitting guilt, thus avoiding experiencing shame in the aforementioned sex offense cases, for example.\textsuperscript{56} Defendants who enter such pleas escape the high cost of bail or loss of wages due to pretrial incarceration.\textsuperscript{57} Alford pleas also allow defendants who are actually guilty to avoid accepting or admitting responsibility for their crimes.\textsuperscript{58}

\textsuperscript{51} Id. at 1364.
\textsuperscript{52} See Schultz, supra note 12, at 191.
\textsuperscript{55} Diehm, supra note 1, at 34; Bibas, supra note 37, at 1373.
\textsuperscript{56} Joffrion, supra note 6, at 47; Bibas, supra note 37, at 1363.
\textsuperscript{57} Michael Conklin, The Alford Plea Turns Fifty: Why It Deserves Another Fifty Years, 54 CREIGHTON L. REV. 1, 10-11 (2020).
\textsuperscript{58} Bibas, supra note 37, at 1363.
Alford pleas “empower defendants within a flawed system” and allow defendants to avoid harsher sentences if convicted at trial. In juvenile status offense cases specifically, the entry of an Alford plea may allow the juvenile to avoid facing intensive and traumatic testimony. Juvenile status offenses involve skipping school, running away, or acting out (“being incorrigible”) against their parents. Such cases may cause juveniles emotional damage and adversely impact them in the future if they are asked to testify against their parents, who may already be thought by the juvenile to be the root of the problematic parent-child relationship. Alford pleas also promote honesty between an attorney and client, and decrease the likelihood that defense attorneys might face ethical dilemmas if a client they know to be guilty lies on the stand. Proponents of the Alford plea also believe that such pleas should be accepted by courts even if the defendant maintains their innocence, but “[s]ound policy dictates . . . special care should be taken to make certain the defendant’s guilt is clear.” Finally, Alford pleas allow defendants to have certainty in sentencing and the mere existence of Alford pleas provides defendants with more pleading options to consider in their case.

III. PART II: THE APPLICATION OF ALFORD BY JURISDICTION

The Alford plea is inconsistently used throughout the United States. After North Carolina v. Alford, the Court left it to individual states, and judges within those states, to determine whether or not to accept an Alford plea. Courts have even allowed persons to be

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59 Vota, supra note 3, at 1012-13.
60 Schultz, supra note 12, at 200.
62 Schultz, supra note 12, at 200.
63 Conklin, supra note 57, at 17.
64 Ward, 575 A.2d at 774.
65 Maj. Walburn, supra note 53, at 141.
66 Schneider, supra note 4, at 283.
sentenced to death despite their entry of an Alford plea at the trial court level.67

A. Application of Alford Differs by Jurisdiction

The application of Alford pleas differs across jurisdictions. Certain states allow Alford pleas to be used to impeach party opponents, while others will not allow such impeachment.68 For example, in Washington, Alford pleas are admissible in future criminal cases involving the defendant.69 The admission of a defendant’s prior Alford plea entry may not be objected to as hearsay when offered as evidence against the defendant in a future proceeding.70 Instead, Alford pleas in Washington are admissible as “admissions by a party opponent.”71

Juvenile courts across the nation also differ as to whether Alford pleas should be entered in court, as juvenile court primarily relies on rehabilitation to help juvenile offenders, which requires an admission of guilt to be successful.72

Further, states in general differ in terms of their acceptance of Alford pleas. As of 2013, forty-seven states and the District of Columbia allow the entry of Alford pleas.73 Indiana’s Supreme Court has essentially barred their acceptance when the court held that “judges may not accept guilty pleas accompanied by protestations of innocence,” a central feature of the Alford plea.74 The Indiana Supreme Court noted that Alford pleas risk being “unintelligent, involuntary, and inaccurate” and even weaken the public’s respect for the courts.75 Michigan and New Jersey also prohibit Alford pleas.76 Arizona courts acknowledge that the public confidence in the judicial system may be lost with the admission of

68 Diehm, supra note 1, at 49.
69 Molesworth, supra note 31, at 933.
70 Id.
71 Id.
72 Schultz, supra note 12, at 187.
73 Schneider, supra note 4, at 283.
74 Bibas, supra note 37, at 1381.
75 Id.
76 Id.
an Alford plea, but still permit the pleas.\textsuperscript{77} Four states, though they still accept Alford pleas in certain instances, generally “constru[e] Alford pleas very narrowly,”\textsuperscript{78} or accept them in limited cases. For example, prosecutors in King County, Washington discourage the entry of Alford pleas in sexual assault cases generally.\textsuperscript{79} Wisconsin finds the application of an Alford plea only to be relevant during sentencing (due to the accompanying assertion of innocence) and treats it as a strict guilty plea in future proceedings.\textsuperscript{80}

Alford pleas are entered at the state level far more often than in a federal court.\textsuperscript{81} Alford pleas have been entered in at most 6.7 percent of state cases,\textsuperscript{82} while the highest percentage of federal cases involving entry of an Alford plea has been 3.0 percent.\textsuperscript{83} Scholars have found that individual judges throughout the United States also choose to prohibit the use of Alford pleas, and many defense attorneys may also be against the use of Alford pleas when their clients profess their innocence to them.\textsuperscript{84} On a federal level, Alford pleas are generally discouraged.\textsuperscript{85} The U.S. military does not allow for the entry of Alford pleas as the military imposes a “higher standard” for guilt in court.\textsuperscript{86} The Department of Justice policies also discourage the use of Alford pleas\textsuperscript{87} and the federal Antitrust and Tax Courts disallow Alford pleas as well as \textit{nolo contendere} pleas\textsuperscript{88}.

As with the academic debate surrounding the Alford plea referenced in Part I, application and opinion of the Alford plea

\begin{flushright}
\textsuperscript{77} Id. \\
\textsuperscript{78} Schneider, supra note 4, at 283-84. \\
\textsuperscript{79} Molesworth, supra note 31, at 932. \\
\textsuperscript{80} Schneider, supra note 4, at 284 (citing to a parenthetical that explains Wisconsin courts’ use of Alford pleas, taken from Jenny Elayne Ronis, \textit{The Pragmatic Plea: Expanding Use of the Alford Plea to Promote Traditionally Conflicting Interests of the Criminal Justice System}, 82 TEMP. L. REV. 1400 (2010)). \\
\textsuperscript{81} Schneider, supra note 4, at 284. \\
\textsuperscript{82} Joffrion, supra note 6, at 54. \\
\textsuperscript{83} Joffrion, supra note 6, at 54. \\
\textsuperscript{84} Bibas, supra note 37, at 1381. \\
\textsuperscript{85} Schneider, supra note 4, at 284. \\
\textsuperscript{86} Maj. Walburn, supra note 53, at 131. \\
\textsuperscript{87} Schneider, supra note 4, at 284. \\
\textsuperscript{88} Bibas, supra note 37, at 1380. \\
\end{flushright}
varies from jurisdiction to jurisdiction. The only consistency found across the nation is the inconsistent use of the Alford plea itself.

IV. PART III: CONSEQUENCES OF ALFORD PLEAS

Scholars have referred to Alford pleas as being the “worst of both worlds in the context of civil litigation,” meaning that after an Alford plea is entered, a plaintiff may still seek claims against the defendant. At the same time, the defendant who believes they were wrongfully convicted, but entered an Alford plea to avoid a lengthy sentence, is barred from bringing claims against the police or prosecution in the case. This occurs because in many jurisdictions, previous guilty pleas will bar a defendant’s access to postconviction relief normally reserved for the wrongfully convicted.

A. Convictions

Under Rule 11 of the Federal Rules of Criminal Procedure, an Alford plea has been interpreted as the equivalent of a guilty plea. The words “Alford plea” are not referenced outright in Rule 11, but courts generally apply the same standards to Alford pleas as guilty pleas, while some states treat Alford pleas more like nolo contendere pleas.

Alford pleas count as guilty pleas when used to quantify criminal history. In United States v. Banks, the Court held that a sentence imposed after a defendant’s entry of an Alford plea counted as a “prior sentence” for purposes of quantifying the defendant’s prior felony offenses. In Banks, a provision under the

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89 Muth, supra note 34.
90 Id.
91 Peterson, 398 P.3d at 262.
92 Diehm, supra note 1, at 32-33; United States v. Banks, 776 F.3d 87, 87 (2d Cir. 2015); Schultz, supra note 12, at 187.
93 Diehm, supra note 1, at 32-33; Banks, 776 F.3d at 87; Schultz, supra, note 12, at 187.
95 Banks, 776 F.3d at 87.
96 Id.
Armed Career Criminal Act (ACCA) subjected Banks to a 180-month (15-year) sentence because he had three prior felony convictions, despite two being entered as Alford pleas. Banks’ attorney argued that a 15-year sentence was far too harsh, as both Alford pleas had been induced in exchange for a sentence of time served. Banks also argued that the statute’s plain language, which excluded Alford pleas as a separate category of guilty plea while differentiating nolo contendere pleas, was indication that the drafters meant to exclude Alford pleas from the calculation of previous felonies. The Court interpreted the plain language of the statute to be inclusive of all guilty pleas, including Alford pleas, and noted the omission from the particular section in the statute was likely a result of “an understanding that it was unnecessary to list it as a separate disposition.” Further, in Burrell v. United States, the Second Circuit Court of Appeals upheld a Connecticut law which counted an Alford plea as substantiating a felony conviction when used to determine whether a person who possessed a firearm was in fact a felon.

However, Alford pleas do not count toward previous convictions in all jurisdictions. In U.S. v. Savage, the Second Circuit Court of Appeals held that a conviction resulting from an Alford plea, wherein there was no evidence in the record that the defendant had actually admitted to all the elements of the crime charged, could not be counted as a prior conviction.

States vary in their interpretation of Alford pleas when it comes to their characterization as a “conviction.” For example, Rhode Island treats Alford pleas as convictions which may be used to enhance future sentences, while Washington restricts the use of Alford pleas as convictions to a limited class of cases.

97 Id. at 88.
98 Id.
99 Id. at 90.
100 Id. at 91.
101 Id. at 92.
102 United States v. Savage, 542 F.3d 959, 960 (2d Cir. 2008).
103 Schneider, supra note 4, at 284.
104 Id.
B. Civil Estoppel

Accepting an Alford plea may result in unrealized consequences when it comes to civil estoppel, or the bar on future civil litigation stemming from the criminal case in which the Alford plea was entered. While nolo contendere pleas avoid estoppel in the future, Alford pleas do not. This means that an Alford plea might be beneficial to someone who is indigent or lacks resources as they may be seen as “judgment-proof.” This may lead the defendant to find an Alford plea more rewarding than other pleas because future civil litigation against them might not seem advantageous to the other party.

C. Denial of Wrongful Conviction Relief

Alford pleas may also bar pleaders from pursuing civil litigation, or monetary relief, against the state if they feel their Alford plea was entered or accepted unlawfully. Alford pleas, like other guilty pleas, may also waive a defendant’s opportunity to contest non-jurisdictional defects in their case. Further, wrongful conviction relief may be unavailable for those who choose to enter Alford pleas. Often the only source of relief for Alford pleaders is a Governor’s granting of clemency, as some states ban those who have entered Alford pleas from seeking postconviction relief due to their treatment of the Alford plea as a guilty plea. And those states that do allow for postconviction relief after entering an Alford plea often display skepticism toward

105 Diehm, supra note 1, at 33.
106 Bibas, supra note 37, at 1373; Molesworth, supra note 31, at 933.
107 Muth, supra note 34.
108 Id.
110 Muth, supra note 34.
111 Schneider, supra note 4, at 280.
112 Id.; VA. CODE ANN. § CCR-B-30 (West 2011) (showing how one state interprets the Alford plea as a guilty plea, evidenced by the language in their guilty plea form: “I do freely and voluntarily enter this plea of guilty pursuant to North Carolina v. Alford. .”).
the defendants’ innocence, given that they technically pled guilty to the charge, albeit through an Alford plea.\textsuperscript{113}

In the case of the \textit{West Memphis Three} (detailed in depth in the following section), an Alford plea entry has left the possibility of exonerating three wrongfully convicted people with new DNA evidence impossible, even though it has been found that evidence exists that likely does exonerate the \textit{West Memphis Three}, confirming their assertion that they were wrongfully convicted.\textsuperscript{114}

The inability to pursue exoneration, and therefore the lifelong containment of a criminal record, exists for many more innocent defendants who have accepted Alford pleas as a method of damage control in the face of increasingly severe consequences.\textsuperscript{115}

The reality is that defendants who are considering entering Alford pleas will, in most cases, have a greater chance at utilizing post-conviction options if they decline to enter the Alford plea and instead enter a plea of “not guilty.”\textsuperscript{116}

\textbf{D. Significant Additional Consequences}

Entry of an Alford plea may lead to a variety of other consequences for the pleader.\textsuperscript{117} Alford pleas may adversely harm the pleader in future child-custody cases due to their equation of a guilty plea.\textsuperscript{118} Entry of an Alford plea may also harm a juvenile (or adult) pleader postconviction in a number of ways, including the possibility of failing a probation ordered program or not being granted release on parole, both of which require admission of guilt.\textsuperscript{119} Alford pleas are determined to act as “convictions” for

\begin{footnotes}
\footnotetext{113}{Schneider, supra note 4, at 301.}
\footnotetext{114}{Id.}
\footnotetext{116}{Schneider, supra note 4, at 290.}
\footnotetext{117}{Anne D. Gooch, \textit{Admitting Guilt by Professing Innocence: When Sentence Enhancements Based on Alford Pleas Are Unconstitutional}, 63 Vand. L. Rev. 1755, 1789 (2010).}
\footnotetext{118}{Bibas, supra note 37, at 1378.}
\footnotetext{119}{Schultz, supra note 12, at 192-93.}
\end{footnotes}
removal purposes in immigration law cases only in select scenarios.\textsuperscript{120}

Further, entries of Alford pleas do not allow for direct appeals in some states.\textsuperscript{121} In \textit{Ward v. Maryland}, Ward appealed his Alford pleading which was entered to avoid further punishment.\textsuperscript{122} Ward denied guilt and asserted his innocence throughout the process.\textsuperscript{123} The court held that no direct appeal existed when an Alford plea was entered, as Alford pleas are simply modified guilty pleas.\textsuperscript{124}

Finally, entry of an Alford plea may require a person to have to register as sex offenders in sex offense cases, which would cause their Alford pleading to be public information.\textsuperscript{125} In sex offenses and more, the victim might also experience both benefit and detriment by having the defendant in their case enter an Alford plea; because though the case will reach a quick resolution, the victim may never get the closure they need if a confession is what they seek.

E. \textit{Victim Views of the Alford Plea}

Victims all experience trauma differently, so it is no surprise that victims would also view a defendant’s entry of an Alford plea as being both beneficial and detrimental to their case.\textsuperscript{126} In some cases, the victim will find the defendant’s entry of an Alford plea to be beneficial because it saves the victim the trauma of having to testify to the events of their case in front of a room full of strangers.\textsuperscript{127} A victim will also find benefit in a defendant entering an Alford plea because of its tendency to expedite the court process, saving the victim the anticipation of a drawn-out litigation process and getting the victim a resolution quickly.\textsuperscript{128}

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\textsuperscript{120} Diehm, \textit{supra} note 1, at 49.
\textsuperscript{121} \textit{Ward}, 575 A.2d at 771.
\textsuperscript{122} \textit{Ward}, 575 A.2d at 771.
\textsuperscript{123} \textit{Id}.
\textsuperscript{124} \textit{Id} at 773.
\textsuperscript{125} Schultz, \textit{supra} note 12, at 192.
\textsuperscript{126} Molesworth, \textit{supra} note 31, at 932.
\textsuperscript{127} \textit{Id} at 925.
\textsuperscript{128} \textit{Id} at 924.
\end{flushleft}
However, since an Alford plea allows a defendant to maintain their innocence throughout litigation, the victim in the case may feel like they never truly obtain justice.\textsuperscript{129} The victim may cease to feel whole when an Alford plea is entered as well, because a key aspect of the victim’s recovery process is acknowledgement from the defendant regarding their wrongdoing.\textsuperscript{130} According to a researcher who advocates against the use of Alford pleas in sexual assault cases in the State of Washington, “[w]hen a defendant does not acknowledge [their] guilt, a victim is left with only [their] own knowledge of what [they] suffered because the defendant does not take responsibility for the crime.”\textsuperscript{131}

While Alford pleas may be viewed both positively and negatively by victims, the Alford plea’s application and unforeseen consequences present themselves differently in various jurisdictions as well. What remains consistent in each jurisdiction, however, is the possibility of a defendant entering an Alford plea because they find it beneficial even though they are innocent, which then leads to a wrongful conviction on that defendant’s record.

V. PART IV: THE ALFORD PLEA AS A STATE-SANCTIONED WRONGFUL CONVICTION

An Alford plea enables the court to proceed with a trial based on the State having sufficient evidence to prove the defendant’s guilt while simultaneously acknowledging the defendant’s self-proclaimed innocence. The resulting juxtaposition of the Alford plea may essentially be considered a state-sanctioned wrongful conviction. While Alford pleas are generally taken because a defendant feels they have no way out of being given a lengthy sentence, they also offer a potential benefit to attorneys. For both prosecutors and defense attorneys, a defendant taking an Alford plea may be seen as a method of taking the “easy” way out by not having to proceed at trial.

\textsuperscript{129} Id. at 930.
\textsuperscript{130} Id. at 930.
\textsuperscript{131} Id. at 932.
A. Attorney Use of Alford Pleas

For a defense attorney whose client asserts their innocence but faces overwhelming evidence against them and the potential for severe sanctions, an Alford plea may be viewed as a necessary pleading. If a defense attorney pushes their client to enter an Alford plea, they may feel that they are saving their client from the harsh penalties against them. This is especially true if the attorney believes the pending lengthy and difficult trial may prove unsuccessful for their client.

Alternatively, when a defense attorney is faced with a difficult defendant who proclaims innocence, but the attorney believes they could be guilty, they may allow the client to enter an Alford plea as a “last resort.”\footnote{Bibas, \textit{supra} note 37, at 1379.} If an Alford plea is entered by a defendant who proclaims their innocence but seems to be guilty in the eyes of the defense attorney, entering the Alford plea will certainly allow the defense attorney to forego preparation for trial, but they will not be able to help their client confront their “illusions and denials,” which may hurt their client in the future.\footnote{Id. at 1375.} Conversely, if the client is innocent yet chooses to enter an Alford plea, the defense attorney will avoid the long battle of having to call in expert witnesses, eyewitnesses, and other parties to help prove the client’s innocence. This may be perceived as “taking the easy way out.” Due to prior experiences, defense attorneys likely don’t push the entry of Alford pleas for clients who proclaim innocence,\footnote{Albert W. Alschuler, \textit{The Defense Attorney's Role in Plea Bargaining}, 84 Yale L.J. 1179, 1279-80 (1974).} since some clients who have considered Alford pleas but have not taken them eventually admit guilt in the future.\footnote{Bibas, \textit{supra} note 37, at 1379.}

Given the influence defense attorneys have on their clients’ decision making, defense attorneys should disclose the full array of unintended consequences that may result from both entering an Alford plea and going to trial. Instead of allowing their clients to take Alford pleas simply to avoid trial, defense attorneys should convince their clients that they believe in their innocence and will
fight for their freedom at trial if that is in the best interest of their client.

Due to the number of cases handled by prosecutors and the lack of available trial dates, prosecutors must, realistically, accept most of the pleas that are drafted or agreed to by the defense. Further, by obtaining an Alford or guilty plea on a case, a prosecutor decreases their case load by that one case, freeing up their time for other pressing matters.136

However, prosecutors may also be seen as “taking the easy route” when they accept Alford pleas. Instead of having to prove their case beyond a reasonable doubt to a jury of the defendant’s peers, and possibly losing the case because the defendant is actually innocent, the entry of an Alford plea (or really, any plea other than not guilty) keeps the case from proceeding further. The Alford plea is sometimes used by prosecutors when they have a weak case, evidenced by its offering before a case’s dismissal.137

B. Case Studies

There are many instances where Alford pleas have resulted in wrongful convictions. In the case of Evan Zimmerman, outlined below, the prosecution eventually dismissed the case against the defendant due to a lack of evidence to convict him upon retrial, a fact which may not have been realized had Mr. Zimmerman chosen to accept the Alford plea offered by the State.138 In the case of the West Memphis Three, also explained below, entry of an Alford plea ended up freeing three wrongfully convicted men after eighteen years of wrongful imprisonment. To this day, the three men still do not have justice for their wrongful convictions.139 These are only two of the more widely recognized cases of wrongful convictions involving Alford pleas, though many others exist.

Another instance of a wrongful conviction involving the Alford plea is the case of State v. D.T.M., where the State of

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136 Molesworth, supra note 31, at 933.
137 FACING LIFE: THE RETRIAL OF EVAN ZIMMERMAN (A&E Television Networks 2006).
138 Id.
139 Vota, supra note 3, at 1005-06.
Washington overturned a stepfather’s Alford plea conviction for first-degree child molestation after his stepdaughter recanted her testimony, which was the only factual basis relied on for the conviction.140 Meanwhile in Maryland, similar to Evan Zimmerman’s case, James Owens was given the opportunity to enter an Alford plea for the murder of a college student, which would have granted him freedom after over two decades in prison.141 Owens instead chose to remain incarcerated for sixteen more months until he finally heard the words, “[t]he state declines to prosecute.”142

1. Evan Zimmerman

In the case of wrongfully convicted Evan Zimmerman, the prosecutor offered Mr. Zimmerman an Alford plea during the retrial of his murder case in exchange for time served.143 Mr. Zimmerman rejected the Alford plea, asserting his innocence throughout the retrial.144 The prosecutor eventually realized that their case was not worth pursuing based on a lack of evidence and dismissed the case before the retrial had concluded.145 Had Mr. Zimmerman accepted the Alford plea to avoid the stress of the retrial, he would have been freed due to the agreement, but he would never have had his record expunged and the Alford plea would remain in his criminal history. Though Mr. Zimmerman’s case is well known in the Midwest, the case of the West Memphis Three is probably the most famous and widely known case in which an Alford Plea was entered.146

2. The West Memphis Three

After being convicted of murdering three eight-year-olds in West Memphis, Arkansas in 1994, the media named Damien

140 Molesworth, supra note 31, at 934-935.
141 Rose, supra note 115.
142 Id.
143 Id.
145 Id.
146 Vota, supra note 3, at 1003.
Echols, Jason Baldwin, and Jessie Misskelley Jr. the “West Memphis Three.”147 The trial of the three young men became a local media frenzy and had community members in a “satanic panic” because the young men listened to metal music and “stood out” from others in the community due to their predominantly black wardrobes.148 A researcher of the case likened their trial to a “modern-day Salem witch trial” because of the community uprising and lack of concrete evidence pointing to any of the young men involved.149 The evidence that did exist against the West Memphis Three was a coerced and recanted confession from Misskelley, who read at an elementary level and had an IQ of seventy-two.150 Additional evidence presented included the victims’ clothes, shoes, and shoelaces that were used to tie the children up – but no blood existed on any of the items admitted.151 Nevertheless, the police had chosen their suspects because they decided the crime scene was a result of a “satanic ritual.”152 Echols’ Wiccan religion, particular looks, and alternative lifestyle caused him to be their number one suspect along with Misskelley and Baldwin.153 Echols was then sentenced to death for his alleged involvement in the murders, and Baldwin and Misskelley were each sentenced to life in prison.154

Each young man attempted to appeal his conviction without success until 2002, when Echols motioned for DNA testing under Arkansas’ newly enacted DNA statutes.155 Tests conducted between 2005 and 2007 failed to connect any of the convicted men with the genetic material gathered from the crime scene, instead the DNA implicated one of the victims’ stepfather and his friend.156 Echols motioned for a new trial, but the motion was denied citing “inconclusive” DNA results.157 Echols appealed, and the Supreme

\[\text{\begin{footnotesize}}\text{\footnotesize147 Vota, supra note 3, at 1004.}\text{\end{footnotesize}}\]
\[\text{\begin{footnotesize}}\text{\footnotesize148 Id. at 1004.}\text{\end{footnotesize}}\]
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\[\text{\begin{footnotesize}}\text{\footnotesize150 Id. at 1007.}\text{\end{footnotesize}}\]
\[\text{\begin{footnotesize}}\text{\footnotesize151 Id. at 1006-07.}\text{\end{footnotesize}}\]
\[\text{\begin{footnotesize}}\text{\footnotesize152 Id. at 1007.}\text{\end{footnotesize}}\]
\[\text{\begin{footnotesize}}\text{\footnotesize153 Id.}\text{\end{footnotesize}}\]
\[\text{\begin{footnotesize}}\text{\footnotesize154 Id. at 1008.}\text{\end{footnotesize}}\]
\[\text{\begin{footnotesize}}\text{\footnotesize155 Id. at 1009.}\text{\end{footnotesize}}\]
\[\text{\begin{footnotesize}}\text{\footnotesize156 Id. at 1005.}\text{\end{footnotesize}}\]
\[\text{\begin{footnotesize}}\text{\footnotesize157 Id.}\text{\end{footnotesize}}\]
Court of Arkansas reversed, stating the lower court interpreted the DNA testing statutes incorrectly and ruling that for a new trial to even be considered, an evidentiary hearing must first be held to review the DNA results.\textsuperscript{158}

Prior to the evidentiary hearing taking place, each of the \textit{West Memphis Three} entered Alford pleas asserting their innocence but technically pleading guilty to the crimes.\textsuperscript{159} The court sentenced each young man to the time they had already served, allowing the \textit{West Memphis Three} to finally gain freedom after over eighteen years in prison.\textsuperscript{160}

In regard to the \textit{West Memphis Three}, the entry of an Alford plea essentially allowed the courts to evade accountability for any mishandling of the case.\textsuperscript{161} A researcher studying the case stated that “[t]he Circuit Court found ‘compelling evidence’ that a new trial would result in an acquittal, yet it consented to Echols, Baldwin, and Misskelley signing on record that they each caused the deaths of the three boys and knew or had reason to know that the victims were particularly vulnerable.”\textsuperscript{162}

Of course, not every Alford plea results in the same injustice experienced by the \textit{West Memphis Three}, but injustice should be avoided even if it exists in only a small number of cases. Alford pleas will likely never be abolished, but they could be accompanied by certain safeguards. Introducing safeguards would drastically decrease the chances of wrongful convictions occurring due to the entry of Alford pleas by innocent defendants.

\textbf{VI. PART V: SAFEGUARDS TO PROTECT AGAINST ALFORD PLEAS LEADING TO WRONGFUL CONVICTIONS}

To avoid having innocent people enter Alford pleas, a new type of hearing should be created that will examine the evidence the State claims to have that will prove the defendant guilty beyond a reasonable doubt in front of a jury of their peers. This could be

\textsuperscript{158} Id.
\textsuperscript{159} Id.
\textsuperscript{160} Id. at 1005-06.
\textsuperscript{161} Id. at 1020.
\textsuperscript{162} Id. at 1020.
called an “Alford Hearing” and should be held shortly following the request to enter an Alford plea if the defendant asserts their innocence.

A. *The Alford Hearing*

The Alford Hearing will allow the judge to act as a hypothetical jury and allow for an abbreviated presentation of the government’s evidence against the accused. This hearing would be designed to allow the judge to assess the strength of the government’s case in a manner greater than a preliminary probable cause determination.\(^{163}\) In a typical preliminary probable cause determination, a court takes the government’s incriminating assertions at face value.\(^{164}\) In an Alford Hearing, the court could weigh the abbreviated presentation of evidence to determine the reasonableness of the defendant’s desire to enter an Alford plea.\(^{165}\) Not only would this add an extra layer of scrutiny to safeguard against injustice motivated by a combination of the defendant’s desire to minimize punishment with the prosecutor’s desire to obtain a conviction, but it could possibly provide new avenues of appellate review that are currently unavailable to Alford pleaders.\(^{166}\)

At the conclusion of the Alford Hearing, the judge would determine whether the prosecution’s case, in light of all the contradictory evidence provided by the defense thus far, could legitimately cause a reasonable jury to convict the defendant.

The evidence presented by the prosecution should be far more than simply a confession and circumstantial evidence if accompanied by a defendant’s assertion of innocence and a reasonable explanation for their whereabouts during the crime. If the judge still believes that a reasonable jury may find the defendant guilty beyond a reasonable doubt, they may accept the Alford plea, so long as there are accompanied warnings regarding the long-term implications of entering the Alford plea stated on the record and

\(^{163}\) Interview with Judge Padula, Pierce Cnty. Dist. Ct., in Tacoma, Wash. (May 4, 2022).
\(^{164}\) *Id.*
\(^{165}\) *Id.*
\(^{166}\) *Id.*
agreed to by the defendant. Such warnings should include a discussion of the consequences of having an Alford plea listed as a conviction on a person’s record, the inability to obtain future wrongful conviction relief from the State, and the allowance of civil cases to move forward against the defendant in the present case.

B. *Trials Offered Without More Severe Punishment*

Alternatively, and admittedly less realistic, Alford pleas could be abolished completely. If this were to happen, all cases where a defendant asserts their innocence should be taken to trial - but *without the risk of more severe punishment*. The defendant would then not have to face the same kind of predicament faced by Alford himself – enter a guilty plea to avoid the death penalty or risk the death penalty when attempting to prove his innocence to a jury of his peers. Getting rid of this internal dilemma would reduce the number of defendants putting aside their claim of innocence and pleading to crimes they may not have committed. It would also force the evidence the prosecutor believes to establish proof beyond a reasonable doubt to be examined by a jury. Unfortunately, sending all cases where a defendant asserts their innocence to trial would likely cause a backup in the already overwhelmed criminal justice system where currently only five percent of cases make it to trial.¹⁶⁷

Any cases that go to trial and are eligible for cash bail, however, should be given automatic personal recognizance release. This would ensure that avoiding time spent incarcerated and away from work or home would not be persuasive reasons that a person would willingly plead guilty or enter an Alford plea to otherwise avoid trial. Pre-trial incarceration and bail reform are topics that are far too large for this paper, but their mention cannot be ignored alongside a recommendation of sending all cases to trial.

VII. **Conclusion**

Alford pleas are taken by defendants who fear lengthy sentences or death, but have determined that being released from prison or obtaining a shorter sentence is in their best interest. Some

people who weigh these decisions and enter Alford pleas may be completely innocent and have continuously asserted their innocence under oath. Such Alford pleas accepted by the Court are essentially the equivalent of state-sanctioned wrongful convictions.

Alford pleas undermine public confidence in the justice system and have long-standing consequences for those who enter them. Additionally, they have inconsistent application across the United States and may bar a wrongfully convicted person who has entered an Alford plea from seeking postconviction relief in certain jurisdictions. However, Alford pleas do not bar civil cases against the defendant from moving forward.168 This means that an innocent person may be placed in the position of having no outlet to obtain wrongful conviction relief from the state, while simultaneously being taken to court in a civil case stemming from their conviction.169

To remedy the problem of wrongfully convicting innocent people through the acceptance of an Alford plea, judges should create and hold evidentiary “Alford Hearings.” Through “Alford Hearings,” judges could verify that the prosecution’s belief that they may prove their case beyond a reasonable doubt is realistic. Alternatively, Alford pleas may be abolished in favor of sending all cases where innocence is asserted to trial, if accompanied by a promise that an increased sentence will not be the outcome if found guilty. No matter what changes, if any, are made with regard to the acceptance of Alford pleas, defendants who consider entering Alford pleas should be given the full information required to ensure they are aware of all the unintended future consequences that may accompany their Alford plea.

168 Muth, supra note 34.
169 Muth, supra note 34.