(New) Sec. 4-8A. Pleas, Plea Discussions, and Related Statements

(a) Prohibited Uses. Evidence of the following shall not be admissible in a civil or criminal case against a person who has entered a plea of guilty or nolo contendere in a criminal case or participated in plea negotiations in such case, whether or not a plea has been entered:

(1) a guilty plea that was later withdrawn or rejected or any statement made in conjunction with such a plea;

(2) a plea of nolo contendere or a guilty plea entered under the *Alford* doctrine or any statement made in conjunction with such a plea;

(3) a statement made during plea discussions with an attorney for the prosecuting authority if the discussions did not result in a guilty plea or they resulted in a later-withdrawn guilty plea.

(b) Exceptions. The court may admit a statement described in subsection (a):

(1) in any proceeding in which another statement made during the same plea or plea discussions has been introduced, if in fairness the statements ought to be considered together; or

(2) in a criminal proceeding for perjury or false statement, if the defendant made the statement under oath, on the record, and with counsel present.

COMMENTARY

(a) Prohibited Uses.

Section 4-8A is consistent with Connecticut law. See *Lawrence* v. *Kozlowski*, 171 Conn. 705, 711–12 and 711 n.4, 372 A.2d 110 (1976), cert. denied, 431 U.S. 969, 97 S. Ct. 2930, 53 L. Ed. 2d 1066 (1977); see also *State v. Gary*, 211 Conn. 101, 105–107, 558 A.2d 654 (1989); *State v. Ankerman*, 81 Conn. App. 503, 514 n.10, 840 A.2d 1182, cert. denied, 270 Conn. 901, 853 A.2d 520, cert. denied, 543 U.S. 944, 125 S. Ct. 372, 160 L. Ed. 2d 256 (2004); *State v. Anonymous*, 30 Conn. Supp. 181, 182,186, 307 A.2d 785 (1973). This rule is also in accordance with Practice Book § 39-25, which provides for the inadmissibility of rejected pleas of guilty or nolo contendere or pleas which are later withdrawn. See *U.S.* v. *Roberts*, 660 F.3d 149, 157 (2d Cir. 2011), cert. denied, ___U.S.___, 132 S. Ct. 1640, 182 L. Ed. 2d 239 (2012) (discussion of Fed. R. Evid. 410

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and waiver of such rights).

Further, the rule is consistent with Fed. R. Evid. 410. Excluding offers to plead guilty or nolo contendere promotes the disposition of criminal cases by compromise. “Effective criminal law administration . . . would hardly be possible if a large proportion of the charges were not disposed of by such compromises.” (Internal quotation marks omitted.) Fed. R. Evid. 410, advisory committee’s notes.

In *Kercheval v. United States*, 274 U.S. 220, 47 S. Ct. 582, 71 L. Ed. 1009 (1927), withdrawn pleas of guilty were held inadmissible in federal prosecutions. The Court stated that “[w]hen the plea was annulled it ceased to be evidence. . . . As a practical matter, [the withdrawn plea] could not be received as evidence without putting the petitioner in a dilemma utterly inconsistent with the determination of the court awarding him a trial.” (Citation omitted.) Id., 224.

As the Advisory Committee Notes indicate, rule 410 of the Federal Rules of Evidence “gives effect to the principal traditional characteristic of the nolo plea, i.e. avoiding the admission of guilt which is inherent in pleas of guilty. This position . . . recogniz[es] the inconclusive and compromise nature of judgments based on nolo pleas.” Fed. R. Evid. 410, advisory committee’s notes. Similarly, a plea under *North Carolina* v. *Alford*, 400 U.S. 25, 37, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970), is viewed as the functional equivalent of a plea of nolo contendere. See *State* v. *Palmer,* 196 Conn. 157, 169 n.3, 491 A.2d 1075 (1985).

A statement made during an *Alford* plea is not necessarily inadmissible in every situation. See, e.g., *State* v. *Simms*, 211 Conn. 1, 7, 557 A.2d 914, cert. denied, 493 U.S. 843, 110 S. Ct. 133, 107 L. Ed. 2d 93 (1989) (admissibility of *Alford* plea canvass upheld under unique circumstances where witness used *Alford* plea to strike bargain for himself and later changed position to benefit defendant).

(b) Exceptions.

The rule permits the use of such statements for the limited purposes of subsequent perjury or false statement prosecutions. Cf. *State* v. *Rodriguez*, 280 N.J. Super. Ct. App. Div. 590, 598, 656 A.2d 53 (1995) (construing state rule of evidence analogous to Fed. R. Evid. 410); *State* v. *Bennett*, 179 W. Va. 464, 469, 370 S.E.2d 120 (1988). Thus, the rule is inapplicable to a statement made in court on the record in the

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presence of counsel when the statement is offered in a subsequent prosecution of the declarant for perjury or false statement. See Fed. R. Evid. 410, advisory committee's notes.

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