

Judicial Council of California

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 23-130
For business meeting on September 19, 2023

Title

Criminal Law: Circumstances in Aggravation

Rules, Forms, Standards, or Statutes Affected

Revise form CR-101

Recommended by

Criminal Law Advisory Committee Hon, Brian M. Hoffstadt, Chair **Agenda Item Type**

Action Required

Effective Date

January 1, 2024

Date of Report

July 18, 2023

Contact

Sarah Fleischer-Ihn, 415-865-7702 sarah.fleischer-ihn@jud.ca.gov

Executive Summary

The Criminal Law Advisory Committee recommends revisions to the optional Judicial Council felony plea form to reflect statutory changes regarding the right to trial on aggravating circumstances in order to justify imposition of the upper term of a criminal offense or enhancement, and to improve consistency throughout the form.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2024, revise *Plea Form, With Explanations and Waiver of Rights—Felony* (form CR-101) to reflect statutory changes regarding the right to a trial on circumstances in aggravation and to make technical changes to improve consistency throughout the form.

The proposed revised form is attached at pages 4–10.

Relevant Previous Council Action

The Judicial Council approved optional form CR-101, effective January 1, 2007, to promote increased uniformity in felony plea waiver forms used throughout the state. Form CR-101 was

last substantively revised, effective March 1, 2023, to reflect statutory changes to the definition of a firearm under Assembly Bill 1621 (Stats. 2022, ch. 76).

Analysis/Rationale

Senate Bill 567 (Stats. 2021, ch. 731) amended Penal Code sections 1170 and 1170.1 to state that a court may impose an upper term of custody for a criminal offense or enhancement if aggravating factors were found true beyond a reasonable doubt at trial or on stipulation by the defendant, with specified exceptions. A court requested a revision of the optional felony plea form to reflect these statutory changes.

Appellate courts remain divided about whether section 1170(b) applies to plea agreements (compare *People v. Mitchell* (2022) 83 Cal.App.5th 1051, 1057–1058 [statute does not apply to negotiated plea deals], review granted Dec. 14, 2022, S277314, and *People v. Sallee* (2023) 88 Cal.App.5th 330, 335–338 [statute does not apply to negotiated plea deals], review granted April 26, 2023, S278690, with *People v. Todd* (2023) 88 Cal.App.5th 373, 377–378 [statute applies to negotiated plea deals], review granted April 26, 2023, S279154). Notwithstanding this unresolved issue, the committee believes that making findings about circumstances in aggravation as part of the guilty or no contest plea, when relevant, would be the safest course to preserve the record. Therefore, the committee has added "circumstances in aggravation" to the plea form as an additional category.

In addition to the changes in response to SB 567, the committee changed some descriptive terms in the form for better clarity and consistency. The current plea form includes sentencing considerations for prior convictions, enhancements, and alternate sentencing schemes (the latter referred to as "allegations" or "special allegations"). However, the form characterizes those considerations collectively as "allegations" in some sections and as "prior convictions, enhancements, and special allegations" in others. These references are inconsistent and interspersed throughout the form. The proposal would improve consistency by consistently specifying "prior convictions," "enhancements," "allegations," and "circumstances in aggravation" when relevant.

The proposal would also replace the term "special allegations" with "allegations." The committee thought the term "special allegations" could be confused with special circumstances as defined in Penal Code section 190.2. Further, the committee agreed that, in practice, "allegations" is the common term in use to refer to alternative sentencing schemes.

Policy implications

This proposal has no major policy implications because the recommendation is to implement new legislation and improve consistency within the form.

Comments

This proposal circulated for comment from March 30 to May 12, 2023. The committee received two comments agreeing with the proposal from the Superior Court of Orange County and the

Orange County Bar Association. A chart of the comments received and the committee's responses is attached at page 11.

Alternatives considered

The committee did not consider the alternative of taking no action, determining that it was important to revise the form to implement statutory changes.

In discussing replacing "special allegations" with "allegations," some committee members were concerned that "allegations" was too broad a term and could be interpreted to apply to the alleged charges or everything alleged in the complaint, rather than just an alternative sentencing scheme. However, the committee ultimately agreed that the manner in which "allegations" was used in the plea form—alongside prior convictions, enhancements, and circumstances in aggravation—sufficiently conveyed its meaning.

Fiscal and Operational Impacts

As an optional form, expected costs should be limited to training, possible case management system updates, and the production of new forms. No other implementation requirements or operational impacts are expected.

Attachments and Links

- 1. Form CR-101, at pages 4–10
- 2. Chart of comments, at page 11

								CR-101
ATTORNEY OR P	ARTY WITHOUT ATTORNEY	STATE BAR	NUMBER:			FOR COURT	USE ONLY	
NAME:								
FIRM NAME:								
STREET ADDRES	SS:							
CITY:		STATE:	ZIP C	DDE:		07/17/	2023	
TELEPHONE NO.		FAX NO.:				_		
EMAIL ADDRESS						DRA	\ F I	
ATTORNEY FOR	(name):				N	ot appr	oved by	7
SUPERIOR	COURT OF CALIFORNIA, COUNTY	′ OF			the	Judicia	al Counc	cil
STREET ADDR	ESS:							
MAILING ADDRI	ESS:							
CITY AND ZIP CO	DDE:							
BRANCH NA								
Defendant:	THE STATE OF CALIFORNIA V.				CASE NUMBER:			
PLEA FO	RM, WITH EXPLANATIONS	AND WAIVER	OF RIC	SHTS—FELONY				
 (1) Fill out this form only if you want to plead guilty or no contest. (2) Read this form carefully. For each item, if you understand and agree with what you read, put your initials in the box to the right of the item. For any item that does not apply to you or that you do not understand, leave the box blank. (3) On page 6, sign and date the form under "DEFENDANT'S STATEMENT." (4) Keep in mind that the court cannot give legal advice. If you have any questions about anything in this form, ask your attorney. 1. CHARGES AND MAXIMUM TERM. I want to plead guilty or no contest ("nolo contendere") to the charges and admit the following prior convictions, enhancements, allegations, and circumstances in aggravation listed below. I understand that the minimum and maximum penalties for the charges to which I am pleading guilty or no contest are listed below. 								
COUNT	CHARGES (SECTION & DESCRIPTION)		MAXIMUM	ALLEGATIONS & CIRCUI AGGRAVATIONS & CIRCUI	ION	MAXIMUM	TOTAL MAXIMUM	
		MINIMUM I	VIAAIIVIUIVI	(SECTION & DESCR		MINIMUM	IVIAXIIVIOIVI	TIME
		1		1.	CDECATE MAYIN	IIM TIME OF 184	DDISONMENT	
				AG	GREGATE MAXIM	OW THE OF IM	FRISUNIVENI	
2. PLEA AGREEMENT. I understand that I must tell the court on this form about any promises anyone has made to me about the sentence I will receive or the sentence recommendations that will be made to the court. My attorney, the court, or the prosecutor has explained to me that if I plead guilty or no contest to the charges and admit the prior convictions, enhancements, allegations, and circumstances in aggravation listed above, the court will sentence me as follows:								
a. Chec	k one: State Prison (or th	e Division of Juv	enile Ju	stice) Count	y Jail for			INITIAL
(1)	years and	months or						
(2)	not less than years	and mor	nths and	or not more than	years ar	nd r	months.	
` , _					, 54.5 41	'		
(3) [Other (specify):							
b. Prob	ation for years under con	ditions to be set	by the co	ourt, including				
days in the county jail or								
	up to days in the count	y jail.						
program, Maximu i	and that a violation of any of the if ordered by the court, may caun Time of Imprisonment" spector 170(h)(5)(B) if the court sends m	conditions of prouse the court to sified in item 1, w	end me	to county jail or stat	e prison for	up to the "	Aggregate	•

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		LE OF THE STATE OF CALIFORNIA v. adant(s):	CASE NUMBER:						
	,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	idan(3).							
2.	C.	Split Sentence (1170(h)(5)(B)): years and days in the county jail and mandatory supervision under conditions set by the court. I understand that if I violate of mandatory supervision, I may be remanded into custody for the entire unserved process.		INITIALS					
	d.	Open Plea (1) I understand the maximum and minimum sentences for the charges, enhanced on page 1. No one has made any other promises to me about when the charges is the charges in the charges.							
		(2) I understand that I am not eligible for probation.							
		(3) I understand that I will not be granted probation unless the court finds at the time of sentencing that this is an unusual case where the interests of justice would be best served by granting probation.							
	е.	Restitution, Statutory Fees, and Assessments I understand that the court will order me to pay the following amounts (if an amount be determined" is entered next to the \$); I must prepare financial disclosure statem determining my ability to pay; and refusal or failure to prepare the required financial used against me at sentencing: (1)	ents to assist the court in I disclosure statements may be Fund , and surcharges	r set.					
	f.	Fines for Revocation of Parole, Postrelease Community Supervision, Mandat	orv Supervision. or Probation						
		I understand that if I am sentenced to state prison , the court will impose a parole community supervision revocation fine, which will be collected only if my parole or is later revoked. I also understand that if I am granted probation or mandatory superprobation revocation fine or mandatory supervision revocation fine, which will be comandatory supervision is later revoked.	revocation fine or a postrelease postrelease community supervision ervision, the court will impose a						
	g.	Dismissal of Other Counts I understand that as part of the plea agreement bargain, the following counts will be	e dismissed after sentencing:						
		I understand and agree that the sentencing judge may consider facts underlying discrestitution and to sentence me on the counts to which I am entering a plea.	smissed counts to determine						
	h.	Other Terms (specify):							
3.	CC	DNSEQUENCES OF MY PLEA		INITIALS					
	a.	No Contest ("Nolo Contendere") Plea I understand that a no contest plea is the same as pleading guilty and that if I plead my no contest plea could be used against me in a civil case.	I no contest, I will be convicted and	I					

g. Prior Prison Term for Sexually Violent Offense

to receive work-time credits. Count

I understand that if I am sentenced to serve a state prison term for this sexually violent offense, as defined in Welfare and Institutions Code section 6600(b), the penalty for any future felony conviction may be increased as a result of my incarceration in this case.

is such an offense.

h. Driver's License and Vehicle Forfeiture

I understand that my privilege to drive a motor vehicle may be revoked or suspended by the court or the California Department of Motor Vehicles and my vehicle may be ordered forfeited if it was involved in the offense.

PEC	PEOPLE OF THE STATE OF CALIFORNIA v. CASE NUMBER:				
Def	Defendant(s):				
3. i	l un	nigration Consequences derstand that if I am not a citizen of the United States, my plea of guilty or no co lusion from admission to the United States, or denial of naturalization under the		INITIALS	
	j. Firearms (Guns), Firearm Parts, and Ammunition Prohibition I understand that federal and state laws prohibit a convicted felon from possessing firearms (guns), firearm parts, or ammunition for life. This includes firearm receivers and frames, and any item that may be used as or easily turned in a receiver or frame (see Penal Code section 16531).				
	k. Oth	er Consequences (specify):			
	l under	TO AN ATTORNEY stand that I have the right to an attorney of my choice to represent me througho o hire an attorney, the court will appoint one to represent me. by give up my right to be represented by an attorney.	out the proceedings. If I cannot		
5.	OTHER I unders circums	R CONSTITUTIONAL RIGHTS stand that I am entitled to each of the following rights as to the charges, enhance tances in aggravation listed in item 1 (on page 1):	e <mark>ements,</mark> allegations, <mark>and</mark>		
;	I un and com	ht to a Jury Trial derstand that I have a right to a speedy and public jury trial. At the trial, I would I could not be convicted unless, after hearing all of the evidence, 12 impartial jumunity were unanimously convinced beyond a reasonable doubt that I am guilt nsel, to participate in jury selection.	urors chosen from the		
l	l un cou	ht to a Court Trial derstand that, as an alternative to a jury trial, if the prosecutor agrees, I may given trial in which the judge alone, without a jury, hears the evidence. I still could ring all of the evidence, the judge was convinced beyond a reasonable doubt the	not be convicted unless, after		
	l un that	ht to Confront and Cross-Examine Witnesses derstand that I have the right to confront and cross-examine all witnesses testify the prosecution must produce the witnesses in court, they must testify under or rney may question them.			
•	l un	ht to Remain Silent and Not to Incriminate Myself derstand that I have the right to remain silent, and my silence cannot be consid erstand that I also have the right not to incriminate myself, and I cannot be force			
•	l un	ht to Produce Evidence and to Present a Defense derstand that I have a right to present evidence and to have the court issue sub esses and evidence favorable to me, at no cost to me. I also have the right to t	. •		
6.	BEFOF	RE THE PLEA			
	a. Dis	cussion With My Attorney			
		ore entering this plea, I have had a full opportunity to discuss the followin The facts of my case;	ng with my attorney:		
		The elements of the charged offenses, prior convictions, enhancements, allegangeravation;	ations, <mark>and circumstances in</mark>		
	(4) (5)	Any defenses that I may have; My constitutional and statutory rights and waiver of those rights; The consequences of this plea, including the immigration consequences; and Anything else I think is important to my case.			

(a)

(b)

(c) (d)

(e)

(f)

(g)

Preliminary hearing transcript

Welfare investigator's declaration

Court documents regarding any alleged prior offenses

Police report

Probation report

Other(specify):

(Specify facts):

I concur in the plea and admissions and join in the waiver of the defendant's constitutional and statutory rights, and I hereby stipulate that there is a factual basis for the plea and refer the court to the police report preliminary hearing transcript ort ____ other /cr of (1070) 3 Cal 3d 505)

probation report	otner (<i>specity):</i>
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(People v. West (1970) 3 Cal.3d 5	95.)
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Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF ATTORNEY)

PEOPLE OF THE STATE OF CALIFORNIA v.	CASE NUMBER:		
Defendant(s):			
INTERPRETER'S STA	ATEMENT		
I, having been duly sworn or having a written oath on file, certify that I truly below.	y translated this form to the defendant in the language noted		
Language: Spanish Other (specify):			
Date:	(CERTIFICATION NUMBER)		
	\(\begin{array}{c} \text{(6EATH 10 ATTOCK 10 IIBELY)} \end{array}		
(TYPE OR PRINT NAME)	(SIGNATURE OF INTERPRETER)		
DISTRICT ATTORNEY'S	STATEMENT		
I have read this form and understand the terms of the plea agreement. I agree do not agree with the terms of the plea agreement and	d the indicated sentence.		
Date:	_		
(TYPE OR PRINT NAME)	(SIGNATURE OF DISTRICT ATTORNEY)		
COURT'S FINDINGS AF	ND ORDER		
The court, having reviewed this form (and any addenda), and having orally	examined the defendant, finds as follows:		
1. The initialed items in this form have been read by or read to the defend	dant, and the defendant understands each of them.		
 The defendant understands the nature of the crimes, prior convictions, enhancements, allegations, and circumstances in aggravation listed in item 1 (on page 1) and the consequences of the plea and any admissions. 			
3. The defendant expressly, knowingly, understandingly, and intelligently waives the constitutional and statutory rights associated with this plea.			
4. The defendant's plea, admissions, and waiver of rights are made freely	and voluntarily.		
5. A factual basis exists for the plea and admissions, or the defendant is p	oleading under a plea bargain under People v. West.		
The court accepts the defendant's plea, admissions, and waiver of rights, a	and the defendant is hereby convicted based thereon.		
It is ordered that this document be filed with the court's records of this case rights be accepted and entered in the minutes of this court.	e and that the defendant's plea, admissions, and waiver of		
Date:	•		
	(SIGNATURE OF JUDICIAL OFFICER)		

SPR23-13

Criminal Law: Circumstances in Aggravation

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	Orange County Bar Association by Michael A. Gregg President	A	*The above listed proposal appropriately addresses the stated purpose.	Thank you for reviewing and submitting a comment for this proposal.
2.	Superior Court of Orange County by Iyana Doherty, Courtroom Operations Supervisor	A	Agree with the proposed changes to the Felony Tahl forms of right to trial on circumstances in aggravation justifying the imposition of upper term of a criminal offense or enhancement. Also agree with modifying "special allegations" to allegations. • The proposal would require reprinting of local form L-341 with the new revisions – no cost savings. • Implementation requirements – communication to staff, stakeholders, and Judicial Officers of addition of language in Felony Tahl forms. • Three months for implementation is sufficient	Thank you for reviewing and submitting a comment for this proposal.