



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 14–15, 2017

Title

Criminal Procedure: Plea Form, with
Explanations and Waiver of Rights—Felony

Agenda Item Type

Action Required

Effective Date

January 1, 2018

Rules, Forms, Standards, or Statutes Affected

Revise form CR-101

Date of Report

July 31, 2017

Recommended by

Criminal Law Advisory Committee
Hon. Tricia Ann Bigelow, Chair

Contact

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Executive Summary

The Criminal Law Advisory Committee recommends revising the optional form for taking guilty pleas in felony cases, which includes advisements of criminal defendants' rights. The proposed revisions (1) respond to recent case law that confirmed the scope of the advisement regarding the court's approval of the plea agreement and underscored the importance of accurately conveying the advisement on form CR-101, and (2) add an advisement regarding the effect of a violation of the terms and conditions of mandatory supervision. These proposed revisions circulated for public comment during the spring 2017 comment cycle. In response to recent case law issued after the comment cycle, the committee also recommends revising the form to enhance the advisement of waiver of right to jury trial. To ensure that a form reflecting each of the legal developments is available to courts as soon as possible, the committee seeks approval of all of the proposed revisions, without a prior period of public comment for the additional revisions to the advisement of waiver of right to jury trial. The committee will seek circulation of the form for public comment on revisions to the advisement of waiver of right to jury trial in the winter 2018 cycle and propose any further revisions based on comments received, to be effective September 1, 2018.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2018, revise *Plea Form, with Explanations and Waiver of Rights—Felony* (form CR-101) as follows:

1. Revise item 2.c. to include an advisement that if the defendant violates any of the terms or conditions of mandatory supervision, he or she may be remanded into custody for a period up to the total of the unserved portion of the sentence.
2. Revise item 6.e. by changing the title of the item to “Court Approval of Plea Agreement.” Retain the first sentence of the item that confirms the defendant understands the plea agreement is based on the facts before the court. Substitute for the remainder of the item a statement confirming that the approval of the court is not binding, the court may withdraw its approval of the plea agreement upon further consideration of the matter, and if the court withdraws its approval the defendant understands that he or she will be allowed to withdraw the plea. Add a citation to Penal Code section 1192.5.
3. Revise item 5.a. regarding waiver of trial by jury to indicate that the rights being waived include (1) a jury trial in which 12 impartial jurors chosen from the community must be *unanimously* convinced beyond a reasonable doubt in order to render a guilty verdict, and (2) the defendant’s right to participate, through counsel, in jury selection.

A copy of form CR-101 with the recommended revisions is attached at pages 5–11.

Previous Council Action

Form CR-101 is an optional form that was originally adopted by the Judicial Council effective January 1, 2007. Unrelated revisions were later approved effective July 1, 2008, and January 1, 2010, and the form was substantially revised in 2012 in response to criminal justice realignment legislation.

Rationale for Recommendation

Form CR-101 is designed to assist courts in making complete records of guilty pleas by including all necessary waivers, the direct consequences of a plea, and the most common advisements and warnings.

Criminal justice realignment legislation enacted changes to felony sentencing laws, including authorizing courts to impose a period of mandatory supervision under Penal Code section 1170(h)(5)(B), and addressing proceedings to modify or revoke mandatory supervision.¹ The

¹ Assem. Bill 109 (Committee on Budget; Stats. 2011, ch. 15); Assem. Bill 117 (Committee on Budget; Stats. 2011, ch. 39); ABX1 17 (Blumenfield; Stats. 2011, ch. 12); Sen. Bill 1023 (Committee on Budget; Stats. 2012, ch. 43).

item on form CR-101 that addresses split sentencing does not currently include an advisement on the effect of a violation of the terms and conditions of mandatory supervision. The committee recommends filling this gap by adding language to item 2.c. on the form.

Recent case law² confirms the scope of the advisement regarding the court's approval of the plea agreement and the circumstances under which the court may withdraw its approval of a negotiated disposition, and underscores the importance of accuracy in the advisements included on form CR-101. Specifically, the court held that paragraph 6.e. on the current form does not adequately convey the admonishments of Penal Code section 1192.5. The court found that "[t]he form does not inform defendants that the court's approval of the negotiated disposition is not binding and that the court could withdraw its approval simply upon 'further consideration' as stated in section 1192.5." The court noted that the "discovery of new facts"—the title of current paragraph 6.e.—is one circumstance under which a trial court could reject a negotiated agreement, but that section 1192.5 is not limited to that one circumstance. The committee recommends revisions to the title and content of section 6.e. to respond to this decision.

After the proposed revisions to these two items circulated for public comment and the Criminal Law Advisory Committee agreed to recommend approval by the Judicial Council, the California Supreme Court rendered a decision in *People v. Vaene Sivongxxay*.³ The decision included guidance regarding trial courts' determinations whether a jury trial waiver was knowing, intelligent, and voluntary and the information that must be conveyed to a defendant to make this determination. The current advisement in item 5.a. on form CR-101 does not include all of the required information. Though it addresses waiver of the right to a jury trial, it does not currently state that the jury must be *unanimously* convinced beyond a reasonable doubt in order to render a guilty verdict, nor does it include an advisement regarding the defendant's right to participate, through counsel, in jury selection. In response to this recent case, the committee recommends addressing these elements by adding appropriate language to item 5.a.

Comments, Alternatives Considered, and Policy Implications

The attached form with the proposed revisions to item 2.c. and 6.e. circulated for public comment as part of the spring 2017 invitation-to-comment cycle from February 27 to April 28. A total of six comments were received; of those, three commenters agreed with the proposal, and three did not designate a position, although their comments indicated agreement with the proposal. No commenters opposed the proposal. A chart with all comments received and the committee's responses is attached at pages 12–19.

Two commenters included several suggestions that did not relate to the items proposed for revision. Since these comments were beyond the scope of the proposal, the committee is not including those suggestions in its recommendation. The committee anticipates that it may consider a more extensive revision of form CR-101 in the future.

² *People v. Silva* (2016) 247 Cal.App.4th 578, 588.

³ *People v. Vaene Sivongxxay* (Cal., June 19, 2017, No. S078895) 2017 WL 2628158

A chart with all comments received and the committee's responses is attached at pages 11–17.

Alternatives considered

The committee considered not proposing any changes to form CR-101. The committee, however, determined that these revisions are appropriate because they are responsive to recent case law and modifications of felony sentencing laws under criminal justice realignment.

With respect to the proposed revisions to the advisement on waiver of jury trial, the committee considered whether to delay recommendation that item 5.a. be revised until after there had been an opportunity to circulate the proposed revisions for public comment. The committee concluded that it was preferable to recommend that the Judicial Council consider all of the proposed revisions in order to be responsive to recent case law and provide, as efficiently as possible, an accurate form for court use, and that the proposed revisions to item 5.a. then be circulated for public comment.

Implementation Requirements, Costs, and Operational Impacts

Expected costs and implementation requirements are 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 5–11
2. Chart of comments, at pages 12–19

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

STREET ADDRESS:

MAILING ADDRESS:

CITY AND ZIP CODE:

BRANCH NAME:

FOR COURT USE ONLY

DRAFT**Not Approved by
the Judicial Council****PEOPLE OF THE STATE OF CALIFORNIA**

v.

Defendant:

PLEA FORM, WITH EXPLANATIONS AND WAIVER OF RIGHTS—FELONY

CASE NUMBER:

- INSTRUCTIONS:**
- (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 allegations 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)	YEARS / MONTHS		PRIOR CONVICTIONS, ENHANCEMENTS, & SPECIAL ALLEGATIONS (SECTION & DESCRIPTION)	YEARS / MONTHS		TOTAL MAXIMUM TIME
		MINIMUM	MAXIMUM		MINIMUM	MAXIMUM	
AGGREGATE MAXIMUM TIME OF IMPRISONMENT							

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 allegations listed above, the court will sentence me as follows:

- a. Check one: ☐ **State Prison** (or the Division of Juvenile Justice) ☐ **County Jail** for INITIALS
- (1) ☐ years and ☐ months or ☐
- (2) ☐ Not less than ☐ years and ☐ months and/or not more than ☐ years and ☐ months. ☐
- (3) ☐ Other (specify): ☐
- b. **Probation** for ☐ years under conditions to be set by the court, including: ☐
- ☐ days in the **county jail** or ☐
- ☐ up to ☐ days in the **county jail**.

I understand that a violation of any of the conditions of probation, including failure to complete a drug education or treatment program, if ordered by the court, may cause the court to send me to **county jail or state prison** for up to the "**Aggregate Maximum Time of Imprisonment**" specified in item 1, which may include a period of mandatory supervision under Penal Code section 1170(h)(5)(B) if the court sends me to county jail.

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INITIALS

2. c. **Split Sentence (1170(h)(5)(B)):** _____ years and _____ days in the county jail and _____ years and _____ days on mandatory supervision under conditions set by the court. I understand that if I violate any of the terms or conditions of mandatory supervision, I may be remanded into custody for the entire unserved portion of the sentence.

d. **Narcotics Addiction Confinement**

I understand that if the court finds that I am addicted to narcotics or in immediate danger of becoming a narcotics addict, the court may send me to a narcotics detention, treatment, and rehabilitation facility for up to the amount of time I would otherwise have served in prison.

e. **Open Plea**

1. ☐ I understand the maximum and minimum sentences for the charges and allegations stated on page 1. No one has made any other promises to me about what sentence the court may order.
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.

f. **Restitution, Statutory Fees, and Assessments**

I understand that the court will order me to pay the following amounts (if an amount is not yet known, "TBD" for "to be determined" is entered next to the \$); I must prepare financial disclosure statements to assist the court in determining my ability to pay; and refusal or failure to prepare the required financial disclosure statements may be used against me at sentencing:

1. ☐ \$ _____ to the Victim Restitution Fund
2. ☐ \$ _____ restitution to actual victims
3. ☐ \$ _____ restitution to the State of California, Victims of Crime Fund
4. ☐ \$ _____ court operations assessment
5. ☐ \$ _____ court facilities assessment
6. ☐ \$ _____ base fine plus any applicable penalties, assessments, and surcharges
7. ☐ \$ _____ other (specify): _____
8. ☐ \$ _____ other (specify): _____
9. ☐ An (additional) amount to be determined by the court at sentencing or such other hearing as the court may set.

g. **Parole Revocation or Probation Revocation Fine**

I understand that if I am sentenced to **state prison**, the court **will** impose a parole revocation fine, which will be collected only if my parole is later revoked. I also understand that if I am granted probation, the court **will** impose a probation revocation fine, which will be collected only if my probation is later revoked.

h. **Dismissal of Other Counts**

I understand that as part of the plea agreement bargain, the following counts will be dismissed after sentencing:

I understand and agree that the sentencing judge may consider facts underlying dismissed counts to determine restitution and to sentence me on the counts to which I am entering a plea.

i. **Other Terms (specify):**

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3. CONSEQUENCES 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 no contest, I will be convicted and my no contest plea could be used against me in a civil case.

b. **Parole and Postrelease Community Supervision**

I understand that if I am sentenced to **state prison** or a **narcotics treatment facility**

(1) I will be placed on parole or postrelease community supervision for up to _____ years after my release.

(2) If I abscond or the court tolls my supervision, the total time of parole or postrelease community supervision can be extended.

(3) If I violate any of the terms or conditions of my parole, I can be sentenced to county jail for up to 180 days for each violation, or returned to state prison for up to one year, up to a maximum of _____ years. If I violate any of the terms or conditions of postrelease community supervision, I can be sentenced to county jail for up to 180 days for each violation, for up to a maximum of 3 years.

c. **Effect of Conviction on Other Cases**

I understand that a conviction in this case may constitute a violation of any other current grant of parole, mandatory supervision, postrelease community supervision, or probation in any other case and that I may receive additional punishment as a result of that violation.

d. **Registration**

I understand that I will be required to register with the local police agency or sheriff's department in the city or county in which I reside as

(1) ☐ an arson offender

(4) ☐ a sex offender (**this registration is a lifelong requirement**)

(2) ☐ a gang member

(5) ☐ other (*specify*):

(3) ☐ a narcotics offender

and that if I fail to register or to keep my registration current for any reason, new felony criminal charges may be filed against me.

e. **Prints and DNA Samples**

I understand that I must provide biological samples and prints for identification purposes—including buccal (mouth) swab samples, right thumb prints, palm prints of each hand, and blood specimens or other biological samples required by law—and that failure to do so constitutes a new criminal offense.

f. **Serious or Violent Felony**

(1) ☐ I understand that by pleading guilty or no contest to a serious or violent felony ("strike"), the penalty for any future felony conviction will be increased as a result of my conviction in this case, depending on the number of strikes I have, up to a mandatory prison sentence of double the term otherwise provided or a term of at least 25 years to life.

(2) ☐ I understand that if I am convicted of a violent felony, jail or prison conduct/work-time credit I may accrue will **not** exceed 15%.

(3) ☐ I understand that if I am admitting a prior strike conviction, prison work-time credit that I may accrue will not exceed 20% of the total term of imprisonment.

(4) ☐ I understand that if I am convicted of murder or a third felony conviction of certain offenses, I am ineligible to receive work-time credits. Count _____ is such an offense.

g. **Prior Prison Term or County Jail Sentence Under Penal Code Section 1170(h)(5)**

I understand that if I am sentenced to prison or county jail under Penal Code section 1170(h)(5), the penalty for any future felony conviction may be increased as a result of my incarceration in this case.

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.

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3. i. **Immigration Consequences**

INITIALS

I understand that if I am not a citizen of the United States, my plea of guilty or no contest may or, with certain offenses, **will** result in my deportation, exclusion from reentry to the United States, and denial of naturalization and amnesty, and that the appropriate consulate may be informed of my conviction. The offenses that **will** result in such immigration action include, but are not limited to, an aggravated felony, conspiracy, a controlled substance offense, a firearm offense, and, under certain circumstances, a moral turpitude offense.

j. **Firearms**

I understand that federal and state laws prohibit a convicted felon from possessing firearms or ammunition for life.

k. **Other Consequences** (*specify*):4. **RIGHT TO AN ATTORNEY**

I understand that I have the right to an attorney of my choice to represent me throughout the proceedings. If I cannot afford to hire an attorney, the court will appoint one to represent me.

I hereby give up my right to be represented by an attorney.

5. **OTHER CONSTITUTIONAL RIGHTS**

I understand that I am entitled to each of the following rights as to the charges listed in item 1 (on page 1):

a. **Right to a Jury Trial**

I understand that I have a right to a speedy and public jury trial. At the trial, I would be presumed to be innocent, and I could not be convicted unless, after hearing all of the evidence, 12 impartial jurors chosen from the community were **unanimously** convinced beyond a reasonable doubt that I am guilty. **I have a right, through my counsel, to participate in jury selection.**

b. **Right to a Court Trial**

I understand that, as an alternative to a jury trial, if the prosecutor agrees, I may give up a jury trial and have a court trial in which the judge alone, without a jury, hears the evidence. I still could not be convicted unless, after hearing all of the evidence, the judge was convinced beyond a reasonable doubt that I am guilty.

c. **Right to Confront and Cross-Examine Witnesses**

I understand that I have the right to confront and cross-examine all witnesses testifying against me. This means that the prosecution must produce the witnesses in court, they must testify under oath in my presence, and my attorney may question them.

d. **Right to Remain Silent and Not to Incriminate Myself**

I understand that I have the right to remain silent, and my silence cannot be considered as evidence against me. I understand that I also have the right not to incriminate myself, and I cannot be forced to testify.

e. **Right to Produce Evidence and to Present a Defense**

I understand that I have a right to present evidence and to have the court issue subpoenas to bring to court all witnesses and evidence favorable to me, at no cost to me. I also have the right to testify on my own behalf.

6. **BEFORE THE PLEA**a. **Discussion With My Attorney**

Before entering this plea, I have had a full opportunity to discuss the following with my attorney:

- (1) The facts of my case;
- (2) The elements of the charged offenses, prior convictions, enhancements, and special allegations;
- (3) Any defenses that I may have;
- (4) My constitutional and statutory rights and waiver of those rights;
- (5) The consequences of this plea, including the immigration consequences; and
- (6) Anything else I think is important to my case.

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6. b. **Questions**

INITIALS

I have no further questions of the court or of my attorney with regard to my plea and admissions in this case, any of the rights, or anything else on this form.

c. **Stipulation to Commissioner**

I understand that I have the right to have a judge take my plea and sentence me. I give up this right and agree to have a commissioner, sitting as a temporary judge, take my plea and sentence me.

d. **Medications or Controlled Substances**

I am not taking any medication that affects my ability to understand this form and the consequences of my plea, have not recently consumed any alcohol or drugs, and am not suffering from any medical condition, except for the following:

e. **Court Approval of Plea Agreement**

I understand that the plea agreement in item 2 (on pages 1 and 2) is based on the facts before the court. I understand that if the court approves this plea agreement the approval of the court is not binding, and that the court may withdraw its approval of the plea agreement upon further consideration of the matter. I understand that if the court withdraws its approval of this plea agreement I will be allowed to withdraw my plea. (Pen. Code, § 1192.5.)

7. **STATUTORY RIGHT TO A PRELIMINARY HEARING**

I understand that before I have a trial, the law gives me the right to a speedy preliminary hearing at which the prosecution would produce evidence and the court must find reasonable cause to believe I committed the crimes with which I have been charged. I understand that I have all of the above constitutional rights at the preliminary hearing, except for the right to a jury trial.

I give up my right to a preliminary hearing and the constitutional rights listed in item 5 (on page 4).

8. **WAIVER OF CONSTITUTIONAL RIGHTS**

I give up, for each of the charges and allegations listed in item 1 (on page 1), my right to a jury trial, my right to a court trial, my right to confront and cross-examine witnesses, my right to remain silent and not to incriminate myself, and my right to produce evidence and to present a defense, including my right to testify on my own behalf. I understand that I am, in fact, incriminating myself with my plea.

9. **THE PLEA**

I freely and voluntarily plead ☐ GUILTY ☐ NO CONTEST to the charges listed in item 1 (on page 1) and admit the allegations listed in item 1 (on page 1), understanding that this plea and admission will lead to the penalties listed in item 2 (on pages 1 and 2).

a. I offer my plea of guilty or no contest freely and voluntarily and with full understanding of everything in this form. No one has made any threats; used any force against me, my family, or my loved ones; or made any promises to me, except as listed in this form, in order to convince me to plead guilty or no contest.

b. I understand that the court is required to find a factual basis for my plea to make sure that I am entering a plea to the proper offenses under the facts of the case.

I offer to the court the following as the basis for my plea of guilty or no contest and any admissions:

(1) I understand that the court may consider the following as proof of the factual basis for my plea:

- (a) ☐ Preliminary hearing transcript
- (b) ☐ Police report
- (c) ☐ Probation report
- (d) ☐ Welfare investigator's declaration
- (e) ☐ Court documents regarding any alleged prior offenses
- (f) ☐ Other (specify):
- (g) ☐ (Specify facts):

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9. b. (2) **I am pleading guilty or no contest to take advantage of a plea agreement (my attorney will stipulate to a factual basis for the plea).** (*People v. West* (1970) 3 Cal.3d 595.)

INITIALS

10. AFTER THE PLEA**a. Surrender**

I understand that the court is allowing me to surrender at a later date to begin serving time in custody.

I agree that if I fail to appear on the date set for surrender or sentencing without a legal excuse, my plea will become an "open plea" to the court, I will not be allowed to withdraw my plea, and I may be sentenced up to the maximum allowed by law.

b. Sentencing Court

I understand that I have the right to be sentenced by the same judge or commissioner who takes my plea.

I give up that right and agree that any judge or commissioner may sentence me.

c. Sentencing Date

I understand that I have the right to be sentenced within 20 court days. I give up that right and agree to be sentenced at a later date.

11. MANDATORY WARNING

I understand that if I am charged with violating Vehicle Code section 23103, as specified in Vehicle Code section 23103.5, or Vehicle Code sections 23152 or 23153, the following warning applies:

You are hereby advised that being under the influence of alcohol or drugs, or both, impairs your ability to safely operate a motor vehicle. Therefore, it is extremely dangerous to human life to drive while under the influence of alcohol or drugs, or both. If you continue to drive while under the influence of alcohol or drugs, or both, and as a result of that driving someone is killed, you can be charged with murder.

DEFENDANT'S STATEMENT

I have read or have had read to me this form and have initialed each of the items that applies to my case. If I have an attorney, I have discussed each item with my attorney. By putting my initials next to the items in this form, I am indicating that I understand and agree with what is stated in each item that I have initialed. The nature of the charges, possible defenses, and effects of any prior convictions, enhancements, and special allegations have been explained to me. I understand each of the rights outlined above, and I give up each of them to enter my plea.

DEFENDANT'S SIGNATURE

DATE

ATTORNEY'S STATEMENT

I am the attorney of record for the defendant. I have reviewed this form with my client. I have explained each of the items in the form, including the defendant's constitutional and statutory rights, to the defendant and have answered all of his or her questions with regard to those rights, the other items in this form, and the plea agreement. I have also discussed the facts of the case with the defendant and have explained the nature and elements of each charge; any possible defenses to the charges; the effect of any prior convictions, enhancements, and special allegations; and the consequences of the plea.

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 ☐ probation report ☐ other (*specify*): (People v. West (1970) 3 Cal.3d 595.)

ATTORNEY'S SIGNATURE

DATE

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INTERPRETER'S STATEMENT

I, having been duly sworn or having a written oath on file, certify that I truly translated this form to the defendant in the language noted below. The defendant stated that he or she understood the contents of the form and then initialed and signed the form.

Language: ☐ Spanish ☐ Other (*specify*):

INTERPRETER'S SIGNATURE_____
DATE_____
INTERPRETER'S NAME (TYPE OR PRINT)**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 the indicated sentence.

ATTORNEY'S SIGNATURE_____
DATE**COURT'S FINDINGS AND ORDER**

The court, having reviewed this form (and any addenda), and having orally examined the defendant, finds as follows:

1. The defendant has read or has had read to him or her and understands each of the initialed items in this form.
2. The defendant understands the nature of the crimes and allegations 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 his or her constitutional and statutory rights.
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 pleading pursuant to a plea bargain under *People v. West*.

The court accepts the defendant's plea, admissions, and waiver of rights, and the defendant is hereby convicted based thereon.

It is ordered that this document be filed with the court's records of this case and that the defendant's plea, admissions, and waiver of rights be accepted and entered in the minutes of this court.

JUDGE'S SIGNATURE_____
DATE

SPR17-12

Criminal Procedure: Felony Waiver and Plea Form

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

	Commentator	Position	Comment	Committee Response
1.	Albert De La Isla Principal Administrative Analyst Superior Court of Orange County	N/I	<p><input type="checkbox"/> Does the proposal appropriately address the stated purpose? Response: Yes</p> <p><input type="checkbox"/> Are the proposed revisions an effective way to address recent case law regarding court approval of plea agreements, and advise defendants regarding possible consequences for mandatory supervision violations? Response: Yes.</p> <p><input type="checkbox"/> Would the proposal provide cost savings? If so please quantify. Response: No cost savings associated with this change.</p> <p><input type="checkbox"/> What would the implementation requirements be for courts, for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? Response: This does not appear to be a mandatory form.</p> <p><input type="checkbox"/> Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Response: No. If a court chooses to adopt this form, there would need to be stakeholder meetings to ensure DA / PD are aligned with content. This would require 4 – 6 months.</p>	<ul style="list-style-type: none"> • No response required. • No response required. • No response required. • No response required. • The committee understands that implementation may require more than two months for some courts; since the form is optional, and the revisions are responsive to case law and recent legislation, the committee recommends the proposed two month implementation timeline.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR17-12

Criminal Procedure: Felony Waiver and Plea Form

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

	Commentator	Position	Comment	Committee Response
			<input type="checkbox"/> How well would this proposal work in courts of different sizes? Response: Unknown.	<ul style="list-style-type: none"> No response required.
2.	Hon. Michael M. Dest, (Ret.) Judge Superior Court of California, County of San Bernardino	N/I	<p>Re: Page 1; paragraph 1 chart:</p> <p>It is useless to only provide a Minimum and Maximum sentencing range for the following reasons: 1. Most cases, the minimum could be probation and 2. The triad is important for the basis of calculating the 1/3 mid-term consecutive sentence.</p> <p>Re: page 3/7 paragraph 3f (2): The word <u>NOT</u> is missing:” ...conduct worktime credits I may accrue will ***exceed 15%”</p> <p>Page 5/7 paragraph 9b(1): Eliminate the individual boxes and just state that ‘it may include any and/or all of the following... or: _____”</p> <p>Finally, in practical form drafting, all the individual variable information should be stated on one page rather than in-between sentences on several other pages or fill in the blanks on different pages. An oversight by an attorney in a specific area on a separate page may have unintended consequences.</p>	<ul style="list-style-type: none"> The committee declines to revise the chart in item 1 because it is substantively beyond the scope of this proposal; the committee may consider more extensive revision of form CR-101 in the future. Due to converting form CR-101 to a new software program, technical errors were included in the version of the form that circulated for comment. The committee has corrected those errors in the recommended version of form CR-101. The committee declines to revise item 9.b.(1) because it is substantively beyond the scope of this proposal; the committee may consider more extensive revision of form CR-101 in the future. The committee declines to revise form CR-101 to include all individual variable information on one page because those revisions are substantively beyond the scope of this proposal; the committee may consider more extensive revision of form CR-101 in the future.

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3.	Orange County Bar Association By: Michael L. Baroni President	A	<p>Judicial Council form CR-101 is an optional form for use when a defendant pleads guilty or nolo contendere in a criminal action. The proposal would amend two parts of the form. The first amendment would add language pursuant to Penal Code section 1192.5 indicating that approval of the court is not binding and that the court may withdraw its approval of the plea agreement at prior to the pronouncement of judgment, and if the court withdraws its approval the defendant understands he or she will be able to withdraw the plea. The absence of this language from the form was criticized in <i>People v. Silva</i> (2016) 247 Cal.App.4th 578, 588. This suggested amendment does accurately convey the language of section 1192.5 and addresses the concerns raised in <i>Silva</i>.</p> <p>The second proposed amendment is to add an advisement regarding the effect of a violation of the terms and conditions of mandatory supervision. Specifically, it would include an advisement that if the defendant violates any of the terms or conditions of mandatory supervision, he or she may be remanded into custody for a period up to the total of the unserved portion of the sentence. This proposed revision is consistent with realignment legislation enacting changes to felony sentencing laws, including authorizing courts to impose a period of mandatory supervision under Penal Code section 1170(h)(5)(B), and addressing proceedings to modify or revoke mandatory supervision. The item on form CR-101 that addresses split sentencing does not currently include an advisement on the effect of a violation of the terms and conditions of mandatory</p>	<ul style="list-style-type: none">• No response required.• No response required.

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			supervision. The amendment would clearly inform a defendant of the consequences of violating the terms and conditions of mandatory supervision.	
4.	San Diego County Bar Association By: Michael Pulos Chair, Appellate Practice Section	N/I	<p>We support the Criminal Law Advisory Committee's decision to revise the felony waiver and plea form and offer the following corrective revisions to the proposed revised form:</p> <p>1. Page 5 of the Invitation to Comment (page 2 of 7 of the plea form):</p> <p style="padding-left: 40px;">A. The margin preceding item d. relating to narcotics addiction confinement contains a stray "2".</p> <p style="padding-left: 40px;">B. As currently written, item 2.h is limited to counts being dismissed as part of the plea. The committee may wish to revise this item to include prior convictions or other enhancement allegations being dismissed pursuant to the terms of the plea.</p> <p>2. On page 6 of the Invitation to Comment (page 3 of 7 of the plea form):</p> <p style="padding-left: 40px;">A. As currently drafted, item 3.a regarding no contest and nolo contendere pleas specifies that such a plea may be used against the</p>	<ul style="list-style-type: none">• Due to converting form CR-101 to a new software program, technical errors were included in the version of the form that circulated for comment. The committee has corrected those errors in the recommended version of form CR-101.• The committee declines to revise item 2.h. because it is substantively beyond the scope of this proposal; the committee may consider more extensive revision of form CR-101 in the future.• The committee declines to revise item 3.a. because it is substantively beyond the scope of this proposal; the committee may consider more extensive revision of form CR-101 in the future.

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			<p>defendant in a civil case. This language appears overly broad because if a defendant pleads to a misdemeanor on a felony charge, his or her plea cannot be used in a civil action. (Pen. Code, § 1016(3).) We recommend that the language be modified to specify that a “. . . no contest plea <i>to a felony</i> . . .” could be used against the defendant in a civil case.</p> <p>B. Item 3.f.(2) appears to be missing a “not” between the words “will” and “exceed”. In addition, it specifies that a criminal defendant who pleads guilty to a “violent felony” will have a limited ability to accrue conduct and work-time credits; because a defendant’s perception of whether his or her felony was “violent” may not be consistent with what the law provides, we suggest adding the words “as defined by law” after “violent felony” in this provision.</p> <p>3. On page 8 of the Invitation to Comment (page 5 of 7 of the plea form):</p> <p>A. In item 7, the word “understand” is missing the “a”.</p> <p>B. Item 9.b.(1)(c) currently includes a probation report as one of the sources that</p>	<ul style="list-style-type: none">• Due to converting form CR-101 to a new software program, technical errors were included in the version of the form that circulated for comment. The committee has corrected those errors in the recommended version of form CR-101.• Due to converting form CR-101 to a new software program, technical errors were included in the version of the form that circulated for comment. The committee has corrected those errors in the recommended version of form CR-101.• The committee declines to revise item 9.b.(1)(c) because it is substantively

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			<p>can be relied on as providing the factual basis for the plea. However, as a probation report is prepared only after the entry of a plea, it cannot provide the factual basis for the plea at <i>the time of the plea</i>. For this reason, we suggest deleting the probation report from the list of possible sources for the factual basis for a plea.</p> <p>4. On page 9 of the Invitation to Comment (page 6 of 7 of the plea form):</p> <p>A. Item 10.a currently specifies that if the defendant fails to appear for sentencing, the court may sentence him or her to the “maximum [term] allowed by law”. The committee may wish to consider revising this language to specify that the defendant may be sentenced to the maximum terms specified in item 1 on the first page of the plea form.</p> <p>B. In item 11, the word “drive” includes a capital “I”.</p> <p>C. As noted, a probation report cannot provide a factual basis for the plea at the time of the plea. We accordingly suggest deleting the probation report from the list of possible sources for the factual basis for a plea in the</p>	<p>beyond the scope of this proposal; the committee may consider more extensive revision of form CR-101 in the future.</p> <ul style="list-style-type: none">• The committee declines to revise item 10.a. because it is substantively beyond the scope of this proposal; the committee may consider more extensive revision of form CR-101 in the future.• Due to converting form CR-101 to a new software program, technical errors were included in the version of the form that circulated for comment. The committee has corrected those errors in the recommended version of form CR-101.• The committee declines to revise the Attorney’s Statement because it is substantively beyond the scope of this proposal; the committee may consider more extensive revision of form CR-101

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			<p>“Attorney’s Statement”.</p> <p>5. On page 10 of the Invitation to Comment (page 7 of 7 of the plea form), the placement of the check boxes under Interpreter’s Statement is somewhat difficult to interpret. We suggest adding more spacing between the word “Language” and the check box intended to indicate that the language being interpreted is “Spanish.”</p> <p>As a final matter, we note that certain of our members have a concern about the plea form insofar as it includes a provision on the last page that appears to require the defendant’s attorney to stipulate as to the source of the factual basis for the plea despite the fact that the law does not require this. (<i>See People v. Palmer (2013) 58 Cal.4th 110, 118</i> [recognizing that the superior court may satisfy its statutory duty by accepting a stipulation from counsel that a factual basis for the plea exists without also requiring counsel to recite the facts or the documentary source of those facts].) We recognize that this is an existing provision of the form, rather than a proposed revision, but nonetheless offer this observation for the Committee’s consideration.</p>	<p>in the future.</p> <ul style="list-style-type: none">• Due to converting form CR-101 to a new software program, technical errors were included in the version of the form that circulated for comment. The committee has corrected those errors in the recommended version of form CR-101.• The committee declines to revise the attorney statement because it is substantively beyond the scope of this proposal; the committee may consider more extensive revision of form CR-101 in the future.
5.	Superior Court of California, County of Los Angeles	A		No response required.

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6.	Superior Court of California, County of San Diego By: Mike Roddy Executive Officer	A		No response required.

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