



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 24, 2019

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**Title**

Criminal Procedure: Immigration  
Consequences Advisement on Plea Forms

**Rules, Forms, Standards, or Statutes Affected**

Revise forms CR-101 and CR-102

**Recommended by**

Criminal Law Advisory Committee  
Hon. Tricia A. Bigelow, Chair

**Agenda Item Type**

Action Required

**Effective Date**

January 1, 2020

**Date of Report**

September 24, 2019

**Contact**

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### Executive Summary

The Criminal Law Advisory Committee recommends amending the language in the immigration consequences section of two Judicial Council plea forms to conform to the plain language of Penal Code section 1016.5.

### Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2020, revise the immigration consequences advisement of *Plea Form, With Explanations and Waiver of Rights—Felony* (form CR-101) and *Domestic Violence Plea Form With Waiver of Rights—Misdemeanor* (form CR-102) to address concerns that the provision in each form contains inaccuracies, and to conform the provision to the plain language of Penal Code section 1016.5.

The revised forms are attached at pages 4–13.

### Relevant Previous Council Action

The Judicial Council approved form CR-101, effective January 1, 2007, to provide increased uniformity in felony plea waiver forms used throughout the state. The immigration consequences

language from the original form has never been changed. Form CR-102 includes similar language about immigration consequences. This language has not changed since the form's approval, effective July 1, 2011.

### **Analysis/Rationale**

California law requires that, before acceptance of a plea of guilty or nolo contendere to any offense punishable as a crime under state law, except offenses designated as infractions, the court must administer the following advisement on the record to the defendant:

If you are not a citizen, you are hereby advised that conviction of the offense for which you have been charged may have the consequences of deportation,<sup>1</sup> exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

(Pen. Code, § 1016.5(a).)

The Judicial Council developed form CR-101 to provide increased uniformity in felony plea waiver forms used throughout the state. The form currently contains the following immigration advisement:

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.

(Judicial Council form CR-101, item (3)(i), at p. 4, original emphasis.)

The committee recognized that, contrary to Penal Code section 1016.5, forms CR-101 and CR-102 inaccurately suggest that certain consequences “will” rather than “may” follow from certain guilty pleas. Thus, the committee recommends replacing the immigration advisement in forms CR-101 and CR-102 with the following language, derived from section 1016.5:

I understand that if I am not a citizen of the United States, my plea of guilty or no contest may result in my deportation, exclusion from admission to the United States, or denial of naturalization under the laws of the United States.

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<sup>1</sup> The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 created unified “removal” proceedings in place of deportation and exclusion proceedings. (See *Vartelas v. Holder* (2012) 566 U.S. 257, 261.) Because Penal Code section 1016.5 was enacted before this change, it uses the earlier terminology. To conform with the Penal Code, this report and the proposed forms use the older terms of “deportation” and “exclusion.”

## **Policy implications**

The committee was concerned that by providing potentially inaccurate information in the immigration consequences advisement, these forms may discourage defendants from pleading to immigration-neutral offenses and create potential conflicts with accurate advice given by defense counsel. Thus, the committee recommends revising the advisement in forms CR-101 and CR-102 with language consistent with Penal Code section 1016.5.

## **Comments**

This proposal circulated for comment from April 11 to June 10, 2019. Seven comments were received. Six commenters agreed with the proposal, including the Superior Courts of Los Angeles and San Diego Counties, the Orange County Bar Association (OCBA), and the Immigrant Legal Resource Center, which had originally brought this issue to the committee's attention. The Superior Court of Orange County did not indicate a position. The OCBA responded to the request for specific comments, including whether the attorney's declaration in forms CR-101 and CR-102 should be updated to include language about immigration consequences. The OCBA responded in the negative, noting that "[b]ecause defense attorneys have an affirmative duty to advise their clients of the collateral immigration consequences of the criminal case... a further affirmation that the attorney has advised the client of immigration consequences seems redundant."

## **Alternatives considered**

The committee considered not undertaking revisions to forms CR-101 and CR-102 but recognized the importance in having the immigration consequences provision accurately reflect the language in Penal Code section 1016.5.

## **Fiscal and Operational Impacts**

Expected costs are limited to possible case management system updates and the production of revised forms. No other implementation requirements or operational impacts are expected.

## **Attachments and Links**

1. Forms CR-101 and CR-102, at pages 4–13
2. Chart of comments, at pages 14–17

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	<b>FOR COURT USE ONLY</b>
<b>PEOPLE OF THE STATE OF CALIFORNIA</b> v. Defendant:	
<b>PLEA FORM, WITH EXPLANATIONS AND WAIVER OF RIGHTS—FELONY</b>	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.

INITIALS

COUNT	CHARGES (SECTION & DESCRIPTION)	YEARS / MONTHS		PRIOR CONVICTIONS, ENHANCEMENTS, & SPECIAL ALLEGATIONS (SECTION & DESCRIPTION)	YEARS / MONTHS		TOTAL MAXIMUM TIME
		MINIMUM	MAXIMUM		MINIMUM	MAXIMUM	
<b>AGGREGATE MAXIMUM TIME OF IMPRISONMENT</b>							

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
- (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**.

INITIALS

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
- (2)  a gang member
- (3)  a narcotics offender
- (4)  a sex offender (this registration is a lifelong requirement)
- (5)  other (specify): \_\_\_\_\_

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 result in my deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

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
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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
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**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
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<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	FOR COURT USE ONLY
PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	
<b>DOMESTIC VIOLENCE PLEA FORM                  WITH WAIVER OF RIGHTS— MISDEMEANOR</b>	CASE NUMBER:

**Instructions:**

- Fill out this form only if you want to plead guilty or no contest.
- 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.
- Sign and date the form under "DEFENDANT'S STATEMENT" on page 3.
- Keep in mind that the court cannot give legal advice. If you have an attorney and have questions about anything in this form, ask your attorney.

INITIALS

1. **Charges and Maximum Penalties.** I want to plead guilty or no contest to the charges listed below. I understand that the maximum penalties for the charges to which I am pleading guilty or no contest are listed below.

COUNT	CHARGES (SECTION & DESCRIPTION)	MAXIMUM PENALTY (FINE & JAIL)

2. **Prior Convictions.** I understand that I am also charged with a prior conviction in case number(s):

3. **Probation Violations.** I understand that I am also charged with a violation of probation in case number(s):

4. **Right to an Attorney** (Leave this box blank if you have 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 concerning the charges and prior convictions (if any) listed in items 1 and 2 (above):

- 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 convinced beyond a reasonable doubt that I am guilty.
- b. **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 to testify under oath in my presence and I or my attorney may question them.
- c. **Right to remain silent and not 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.

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INITIALS

6. **Rights for Probation Violations** (*Leave this box blank if you are not charged with a probation violation*). I understand that I have all the constitutional rights listed above for all probation violations charged against me, except that I do not have a right to a jury trial, only a court hearing before a judge.

7. **Consequences of My Plea**

a. **No contest plea.** I understand that a no contest plea has the same effect as a guilty plea except that it cannot be used against me in a civil case that derives from an act on which this prosecution is based unless the offense is punishable as a felony.

b. **Effect of conviction on other cases.** I understand that a conviction in this case may be used to increase my punishment for future domestic violence convictions and may constitute a violation of any other current grant of parole or probation, which may result in additional punishment.

c. **Mandatory minimum conditions of probation.** I understand that if I am granted probation, the terms and conditions will include *at least* all of the following (see Pen. Code, § 1203.097):

- (1) A minimum of either 36 months (3 years) or 48 months (4 years) of probation;
- (2) A criminal court protective order that may include residence exclusion or stay-away conditions;
- (3) Booking within one week of sentencing if I have not already been booked;
- (4) Several statutory fines, fees, and assessments, including a domestic violence fee, restitution fine, probation revocation fine (stayed), criminal conviction assessment, and court security fee;
- (5) Successful completion of an appropriate batterer's treatment program lasting at least 52 weeks;
- (6) Community service;
- (7) Restitution to the victim (if applicable);
- (8) An order to not own, possess, purchase, or receive any firearms;
- (9) An order to relinquish any firearms in my possession or control; and
- (10) Other:

d. **Effect of future probation violation.** I understand that if I violate any of the terms or conditions of probation, I may be returned to court and sentenced up to the maximum punishment on each charge as indicated in item 1.

e. **Immigration consequences.** I understand that if I am not a citizen of the United States, my plea of guilty or no contest may result in my deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

f. **Firearm prohibition.** I understand that a conviction in this case may prohibit me from owning, using, or possessing firearms and ammunition within 10 years under Penal Code sections 29805 and 30305.

g. **Child custody consequences.** I understand that a conviction in this case may result in a rebuttable presumption that an award of sole or joint physical or legal custody of a child is detrimental to the best interest of the child under Family Code section 3044.

h. **Other consequences** (*specify*):

8. **Before the Plea**

a. **Discussion with my attorney** (*Leave this box blank if you are not represented by an attorney*). Before entering this plea, I have had a full opportunity to discuss with my attorney the facts of the case, the elements of the charged offenses and prior convictions (if any), any defenses that I may have, my constitutional and statutory rights and waiver of those rights, the consequences of this plea, and anything else I think is important to my case.

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

9. **Waiver of Constitutional Rights.** For each of the charges, prior convictions (if any), and probation violations (if any) listed in items 1, 2, and 3, I give up my right to a jury trial, my right to a court hearing, my right to confront and cross-examine witnesses, and my right to remain silent and not to incriminate myself. I understand that I am, in fact, incriminating myself with my plea.

10. **The Plea** (*check one*). I freely and voluntarily plead  GUILTY  NO CONTEST to the charges listed in item 1. I offer my plea with full understanding of everything in this form. No one has made any threats; used any force against me, my family, or 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.

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:
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- |   |  |
|---|--|
| 11. <b>Prior Convictions.</b> I freely and voluntarily admit the prior convictions (if any) listed in item 2, and I understand that this admission may increase the penalties that are imposed on me. | <b>INITIALS</b><br><input style="width: 100%; height: 20px;" type="text"/> |
| 12. <b>Probation Violations.</b> I freely and voluntarily admit the probation violations (if any) listed in item 3.   | <input style="width: 100%; height: 20px;" type="text"/>                    |
| 13. <b>Sentencing.</b> I understand that I have a right to delay my sentencing at least 6 hours and as long as 5 days after my plea. I give up this right and agree to be sentenced at this time.     | <input style="width: 100%; height: 20px;" type="text"/>                    |

**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 the effects of any prior convictions and probation violations 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
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**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 and probation violations, and the consequences of the plea.

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 interpreted this form to the defendant in the language noted below. The defendant stated that he or she understood the contents on the form and then initialed and signed the form.

Language:  Spanish  Other (specify): \_\_\_\_\_

Interpreter's Signature	Date
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**COURT'S FINDINGS AND ORDER**

The court, having reviewed this form and having orally examined the defendant, finds that (a) the defendant has read or been read and understands each of the initialed items on this form; (b) the defendant understands the nature of the crimes and allegations listed in items 1, 2, and 3 and the consequences of the plea and any admissions; (c) the defendant expressly, knowingly, understandingly, and intelligently waives his or her constitutional and statutory rights; and (d) the defendant's plea, admissions, and waiver of rights are made freely and voluntarily.

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.

Signature of the Court	Date
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**SPR19-16****Immigration Consequences Explanation on Plea Forms (CR-101, CR-102)**

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

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Immigrant Legal Resource Center by Rose Cahn, Criminal and Immigrant Justice Attorney San Francisco, California	A	These proposed changes resolve the inaccurate information in the prior version of the model plea form. This is a welcome and needed change.	No response needed.
2.	Legal Services for Prisoners with Children by Aila Ferguson, Staff Attorney Oakland, California	A	It is a matter of human rights that people signing plea deals have all relevant information given to them at the time of signing. Including this check box is one necessary step toward that goal.	No response needed.
3.	Lily Harvey Oakland, California	A	No specific comment.	No response needed.

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

**SPR19-16**

**Immigration Consequences Explanation on Plea Forms (CR-101, CR-102)**

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

	Commenter	Position	Comment	Committee Response
4.	Orange County Bar Association by Deirdre Kelly, President	A	<p><i>Does the proposal appropriately address the stated purpose?</i> Yes. Amending the immigration advisement to conform with Penal Code section 1016.5, assures that defendants will not be given incorrect statements of law by the court and eliminates the risk present under the old advisement of telling defendants they will be subject to deportation when their attorneys have in fact determined that will not be a potential consequence.</p> <p><i>Does the language conform to the statute and remove inaccuracies? If not what language would do so?</i> The language tracks Penal Code section 1016.5 and is therefore an accurate statement of law.</p> <p><i>Does the language sufficiently parallel the rest of the plea form stylistically?</i> Yes.</p> <p><i>Should the attorney’s declaration on both forms be updated to include language about immigration consequences specifically? If so, what language should be included?</i> No. The “Attorney’s Statement” on the plea forms already requires the attorney to affirm that he or she has reviewed the consequences of the plea with the client. Because defense attorneys have an affirmative duty to advise their clients of the collateral immigration consequences of the criminal case (<i>Padilla v. Kentucky</i> (2010) 559 U.S. 356, 375) a further</p>	<ul style="list-style-type: none"> <li>• No response needed.</li>   <li>• No response needed.</li>   <li>• No response needed.</li>   <li>• The committee appreciates the comment.</li> </ul>

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

**SPR19-16**

**Immigration Consequences Explanation on Plea Forms (CR-101, CR-102)**

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

	Commenter	Position	Comment	Committee Response
			affirmation that the attorney has advised of the client of immigration consequences seems redundant.	
5.	Superior Court of Los Angeles County (no name provided)	A	<p><i>Does the proposal appropriately address the stated purpose?</i> Yes, the proposal addresses the stated purpose.</p> <p><i>Does the language conform to the statute and remove inaccuracies? If not, what language would do so?</i> Yes, the language conforms to the statute and removes inaccuracies.</p> <p><i>Does the language sufficiently parallel the rest of the plea form stylistically?</i> Yes, the language is sufficient.</p> <p><i>The advisory committee also seeks comments from courts on the following cost and implementation matters: Would the proposal provide cost savings? If so, please quantify.</i> We do not anticipate cost savings.</p> <p><i>What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures</i></p>	<ul style="list-style-type: none"> <li>• No response needed.</li> <li>• No response needed.</li> <li>• No response needed.</li> <li>• No response needed.</li> </ul>

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



**SPR19-16**

**Immigration Consequences Explanation on Plea Forms (CR-101, CR-102)**

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

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p><i>(please describe), or modifying case management systems?</i></p> <p>Implementation requirements include changing the case management system to reflect the new language. Also, new forms (CR-101 and CR-102) will need to be ordered and distributed.</p> <p><i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i></p> <p>Six months would be preferred to give our technology staff sufficient time to make the necessary changes.</p>	<ul style="list-style-type: none"> <li>• No response needed.</li> <li>• No response needed.</li> </ul>
6.	Superior Court of Orange County (no name provided)	NI	No response required. This is not a mandatory form and we have our own local tahl forms. However, if a change is finalized the information may be considered for inclusion in our local forms.	<ul style="list-style-type: none"> <li>• No response needed.</li> </ul>
7.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	No additional comment.	<ul style="list-style-type: none"> <li>• No response needed.</li> </ul>

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