



# Judicial Council of California

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## Subject Details (With Text)

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**Title:** Criminal Procedure: Plea Form, with Explanations and Waiver of Rights-Felony (Action Required)

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9/15/2017	1	Judicial Council	approved	Pass

### Title

### **Criminal Procedure: Plea Form, with Explanations and Waiver of Rights-Felony (Action Required)**

### 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.