

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT

**SPR21-06**

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<b>Title</b>	<b>Action Requested</b>
Criminal Procedure: Immigration Consequences Advisement on Plea Forms	Review and submit comments by May 27, 2021
<b>Proposed Rules, Forms, Standards, or Statutes</b>	<b>Proposed Effective Date</b>
Revise forms CR-101 and CR-102	January 1, 2022
<b>Proposed by</b>	<b>Contact</b>
Criminal Law Advisory Committee Hon. Brian M. Hoffstadt, Chair	Eve Hershcopf, 415-865-7961 <a href="mailto:Eve.Hershcopf@jud.ca.gov">Eve.Hershcopf@jud.ca.gov</a>

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### Executive Summary and Origin

The Criminal Law Advisory Committee proposes revisions to *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 conform to case law that has clarified the requirements for court and counsel immigration consequences advisements.

### Background

The Judicial Council approved for optional use *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 promote increased uniformity in plea waiver forms used throughout the state. Form CR-101, approved effective January 1, 2007, was substantially revised in 2012 in response to criminal justice realignment legislation and was most recently revised effective January 1, 2021. Form CR-102, approved effective July 1, 2011, was last revised effective January 1, 2020. The forms are designed to include all necessary waivers, a notice of the direct consequences of a plea, and common advisements, including advisements regarding the immigration consequences of a plea.

Penal Code section 1016.5 (see Link A) requires the court, prior to acceptance of a plea of guilty or nolo contendere to any offense punishable as a crime under state law except infractions, to administer an advisement regarding immigration consequences to the defendant. Both forms CR-101 and CR-102 were revised, effective January 1, 2020, to conform to the statutory language by requiring the defendant to confirm their understanding that if they are not a citizen of the United States, the plea of guilty or no contest *may* result in deportation or other

*This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee.  
It is circulated for comment purposes only.*

immigration consequences. The forms had previously included the word “will” rather than “may.” Although the section 1016.5 statement is included in forms CR-101 and CR-102, the statute requires the court to administer the advisement on the record.

In 2019, the Legislature amended Penal Code section 1473.7<sup>1</sup> (see Link B) to make it easier to retroactively challenge convictions based on the ground that the defendant was not properly advised of the immigration consequences. Under the 2019 amendment, the trial court may set aside a conviction based on counsel’s immigration advisement errors without a “finding of ineffective assistance of counsel.”

In *People v. Ruiz* (2020) 49 Cal.App.5th 1061, the Court of Appeal, Second Appellate District, held that the defendant was entitled to challenge her conviction under Penal Code section 1473.7 on the basis that she had not received adequate advisement about the immigration consequences of her plea, and that she did not have to meet the ineffective assistance of counsel standard that was applicable earlier. The court noted that the section 1016.5 advisement alone was not an adequate advisement given the nature of Ruiz’s controlled substance offense.

The *Ruiz* decision is consistent with other recent decisions addressing the differing duties of the court and of counsel in advising defendants regarding immigration consequences. In *People v. Camacho* (2019) 32 Cal.App.5th 998, the Second Appellate District reversed the denial of a section 1473.7 motion and granted relief based on the failure of defense counsel to advise about mandatory deportation, notwithstanding the court’s advisement that the plea “will result” in deportation. In *In re Hernandez* (2019) 33 Cal.App.5th 530, 545, the Fourth Appellate District held that “the ‘generic advisement’ required of the court under Penal Code section 1016.5, subdivision (a) ... ‘is not designed, nor does it operate, as a substitute for such advice’ of defense

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<sup>1</sup> Penal Code section 1473.7(a)(1) authorizes the filing of a motion to vacate a conviction or sentence for the following reason:

The conviction or sentence is legally invalid due to prejudicial error damaging the moving party’s ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty or nolo contendere. A finding of legal invalidity may, but need not, include a finding of ineffective assistance of counsel.

counsel regarding the applicable immigration consequences in a given case” (quoting *People v. Patterson* (2017) 2 Cal.5th 885, 898).<sup>2</sup>

Based on these decisions, the committee is recommending revisions to the attorney advisement and the Attorney’s Statement in forms CR-101 and CR-102 to state that defendant was advised by counsel of immigration consequences that apply to the defendant, if any, and whether they are mandatory.

## The Proposal

The committee proposes the following revisions to form CR-101:

- Revise item 6a(5), the attorney advisement, to read:

Before entering this plea, I have had a full opportunity to discuss the following with my attorney: The consequences of this plea, including the immigration consequences; and that apply to me, if any, and whether any of the immigration consequences are mandatory.

- Revise the Attorney’s Statement to read:

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

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<sup>2</sup> The California Supreme Court explained in *Patterson* (2 Cal.5th at pp. 896–897):

[R]eceipt of the section 1016.5 advisement does not bar a criminal defendant from challenging his conviction on the ground that his counsel was ineffective in failing to adequately advise him about the immigration consequences of entering a guilty plea. [Citation.] We explained that, under section 1016.5, “defendants who wish to plead guilty are entitled to receive from the court some advice regarding immigration consequences—a general warning of three immigration consequences that ‘may’ occur. [Citation.] In evaluating the court’s advice, “[t]he defendant can be expected to rely on counsel’s independent evaluation of the charges, applicable law, and evidence, and of the risks and probable outcome of trial.’ ” [Citation.] One of the purposes of the section 1016.5 advisement is to enable the defendant to seek advice from counsel about the actual risk of adverse immigration consequences. [Citation.]

In a footnote (*id.* at p. 897, fn. 4.) the Court noted:

This intent recently has been reinforced by the 2015 enactment of Penal Code section 1016.3, which requires that defense counsel “provide accurate and affirmative advice about the immigration consequences of a proposed disposition ... .”

The Court continued at page 898:

As we explained in *Giron*, to hold that ignorance of specific immigration consequences may constitute good cause to withdraw a plea is not to hold that the trial court is under a duty to provide such case-specific immigration advice. [Citation.] ... [¶] ... The generic advisement under section 1016.5 is not designed, nor does it operate, as a substitute for such advice [from counsel].

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, including the immigration consequences that apply to the defendant, if any, and whether any of those immigration consequences are mandatory.

The committee proposes the following revisions to form CR-102:

- Revise item 8a, “Discussion with my attorney,” to read:

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, including the immigration consequences that apply to me, if any, and whether any of the immigration consequences are mandatory, and anything else I think is important to my case.

- Revise the Attorney’s Statement to read:

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, including the immigration consequences that apply to the defendant, if any, and whether any of those immigration consequences are mandatory.

The committee recommends two other minor revisions: (1) on form CR-101, adding “Pen. Code, §” to the heading of item 2c; (2) on form CR-102, revising the wording of subdivision (a) of the Court’s Findings and Order to be consistent with the same finding (item 1) on form CR-101.

### **Alternatives Considered**

Given the recent revision of the forms, the committee discussed postponing further revisions, but decided to move forward in order to conform the forms to the case law to delineate more clearly the varying responsibilities of the court and defense counsel with respect to advisement of the defendant on immigration consequences. The committee also considered an alternative approach to including the advisement:

- Revise the immigration consequences advisement (item 3i on form CR-101) to include check boxes and read:

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

- Revise the attorney advisement (item 6a(5) on form CR-101) to read:

Before entering this plea, I have had a full opportunity to discuss the following with my attorney: The consequences of this plea, including ~~the~~ whether any immigration consequences are mandatory;

The committee declined to select this option, based on the following:

- Using “will” in the advisement is inconsistent with the statutory language in Penal Code section 1016.5(a), which requires the court to administer a specific advisement on the record to the defendant that states that the offense for which the defendant has been charged *may* have immigration consequences.
- Including language in form CR-101 that confirms that the plea *will* result in immigration consequences may inadvertently reveal information about the defendant’s immigration status in a public court document—a potentially harmful unintended consequence. The harm could be avoided by using alternative language in the attorney advisement.

### **Fiscal and Operational Impacts**

As both forms CR-101 and CR-102 are optional forms, expected costs are limited to training, possible case management system updates, and the production of new forms. No other implementation requirements or operational impacts are expected.

### **Request for Specific Comments**

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

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.
- 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?
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

### **Attachments and Links**

1. Forms CR-101 and CR-102, at pages 7–16
2. Link A: Penal Code section 1016.5,  
[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=1016.5&lawCode=PEN](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1016.5&lawCode=PEN)
3. Link B: Penal Code section 1473.7,  
[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=1473.7.&lawCode=PEN](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1473.7.&lawCode=PEN)

<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 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 (Pen. Code, § 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. **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.

e. **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.

f. **Fines for Revocation of Parole, Postrelease Community Supervision, Mandatory Supervision, or Probation**

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

g. **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.

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

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.



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**b. Parole and Postrelease Community Supervision**

I understand that if I am sentenced to **state prison**

- (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 sex offender (**this registration is a lifelong requirement**)
- (4)  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 for Sexually Violent Offense**

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.

**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.  | <b>Immigration Consequences</b><br>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.   | INITIALS<br><input type="checkbox"/> |
|    | j.  | <b>Firearms</b><br>I understand that federal and state laws prohibit a convicted felon from possessing firearms or ammunition for life.  | <input type="checkbox"/>             |
|    | k.  | <b>Other Consequences</b> ( <i>specify</i> ):  | <input type="checkbox"/>             |
|    |   |  |                                      |
| 4. | <b>RIGHT TO AN ATTORNEY</b><br>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. |  | <input type="checkbox"/>             |
|    | <b>I hereby give up my right to be represented by an attorney.</b>  |  | <input type="checkbox"/>             |
| 5. | <b>OTHER CONSTITUTIONAL RIGHTS</b><br>I understand that I am entitled to each of the following rights as to the charges listed in item 1 (on page 1):   |  |                                      |
|    | a.  | <b>Right to a Jury Trial</b><br>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. | <input type="checkbox"/>             |
|    | b.  | <b>Right to a Court Trial</b><br>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.   | <input type="checkbox"/>             |
|    | c.  | <b>Right to Confront and Cross-Examine Witnesses</b><br>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.   | <input type="checkbox"/>             |
|    | d.  | <b>Right to Remain Silent and Not to Incriminate Myself</b><br>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.  | <input type="checkbox"/>             |
|    | e.  | <b>Right to Produce Evidence and to Present a Defense</b><br>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.   | <input type="checkbox"/>             |
|    |   |  |                                      |
| 6. | <b>BEFORE THE PLEA</b>  |  |                                      |
|    | a.  | <b>Discussion With My Attorney</b><br><br><b>Before entering this plea, I have had a full opportunity to discuss the following with my attorney:</b>   | <input type="checkbox"/>             |
|    |   | (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 that apply to me, if any, and whether any of the immigration consequences are mandatory; 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) <b>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).</b> ( <i>People v. West</i> (1970) 3 Cal.3d 595.)   | INITIALS<br><input style="width: 30px; height: 20px; border: 1px solid black;" type="text"/>   |
| <b>10. AFTER THE PLEA</b>   |  |
| a. <b>Surrender</b><br>I understand that the court is allowing me to surrender at a later date to begin serving time in custody.<br><br>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. | <input style="width: 30px; height: 20px; border: 1px solid black;" type="text"/><br><br><input style="width: 30px; height: 20px; border: 1px solid black;" type="text"/> |
| b. <b>Sentencing Court</b><br>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.  | <input style="width: 30px; height: 20px; border: 1px solid black;" type="text"/>   |
| c. <b>Sentencing Date</b><br>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.   | <input style="width: 30px; height: 20px; border: 1px solid black;" type="text"/>   |
| <b>11. MANDATORY WARNING</b><br>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:  | <input style="width: 30px; height: 20px; border: 1px solid black;" type="text"/>   |

**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.**

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**DEFENDANT'S STATEMENT**

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**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.**

\_\_\_\_\_  
 (SIGNATURE OF DEFENDANT)

\_\_\_\_\_  
 DATE

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**ATTORNEY'S STATEMENT**

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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, including the immigration consequences that apply to the defendant, if any, and whether any of those immigration consequences are mandatory.

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

<b>PEOPLE OF THE STATE OF CALIFORNIA v.</b> Defendant(s):	CASE NUMBER:
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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.

Language:  Spanish  Other (*specify*):

\_\_\_\_\_  
(INTERPRETER'S SIGNATURE)

\_\_\_\_\_  
DATE

\_\_\_\_\_  
(TYPE OR PRINT INTERPRETER'S NAME)

\_\_\_\_\_  
(CERTIFICATION NUMBER)

**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 initialed items in this form have been read by or read to the defendant, and the defendant understands each of them.
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 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 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.

\_\_\_\_\_  
(SIGNATURE OF JUDICIAL OFFICER)

\_\_\_\_\_  
DATE

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	<i>FOR COURT USE ONLY</i>
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.

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:
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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, including the immigration consequences that apply, if any, and whether any of the immigration consequences are mandatory, 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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INITIALS

11. **Prior Convictions.** 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.

12. **Probation Violations.** I freely and voluntarily admit the probation violations (if any) listed in item 3.

13. **Sentencing.** 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.

**14. Relief from Conviction**

You are hereby advised that in the future you may be eligible for relief from the conviction that results from this plea. The Department of Justice is required to grant automatic relief under certain circumstances for convictions imposed on or after January 1, 2021. (Pen. Code, § 1203.425.) Discuss with your attorney whether the conviction that will result from this plea may be eligible for relief. You may also have a right to petition for a certificate of rehabilitation and pardon.

**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

**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, including the immigration consequences that apply to the defendant, if any, and whether any of those immigration consequences are mandatory.

\_\_\_\_\_

(ATTORNEY'S SIGNATURE)

\_\_\_\_\_

DATE

**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.

Language:  Spanish  Other (specify):

\_\_\_\_\_

(INTERPRETER'S SIGNATURE)

\_\_\_\_\_

DATE

\_\_\_\_\_

(TYPE OR PRINT INTERPRETER'S NAME)

\_\_\_\_\_

(CERTIFICATION NUMBER)

**COURT'S FINDINGS AND ORDER**

The court, having reviewed this form and having orally examined the defendant, finds that (a) the initialed items in this form have been read by or read to the defendant, and the defendant understands each of them; (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 JUDICIAL OFFICER)

\_\_\_\_\_

DATE