

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT

SPR12-15

Title	Action Requested
Criminal Justice Realignment: Felony Waiver and Plea Form	Review and submit comments by June 15, 2012
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise form CR-101	January 1, 2013
Proposed by	Contact
Criminal Law Advisory Committee Hon. Steven Z. Perren, Chair	Arturo Castro, arturo.castro@jud.ca.gov , 415-865-7702

Executive Summary and Origin

The Criminal Law Advisory Committee proposes revisions to the Judicial Council *Plea Form, With Explanations and Waiver of Rights—Felony* (form CR-101) in response to recent criminal justice realignment legislation that modified felony sentencing laws.

Background

The *Plea Form, With Explanation and Waiver of Rights—Felony* is an optional form approved by the Judicial Council effective January 1, 2007. The form is designed to include all necessary waivers, the direct consequences of a plea, and the most common advisements and warnings.

Recent criminal justice realignment legislation¹ enacted sweeping changes to long-standing felony sentencing laws effective October 1, 2011, including replacing prison sentences with county jail commitments for certain felonies and eligible defendants, and authorizing courts to impose a period of mandatory supervision upon a defendant's release from county jail under newly added Penal Code section 1170(h)(5)(B).

The Proposal

The Criminal Law Advisory Committee proposes the following form revisions to update the form in response to recent changes to the sentencing laws:

¹ Assem. Bill 109 (Committee on Budget; Stats. 2011, ch. 15); Assem. Bill 117 (Committee on Budget; Stats. 2011, ch. 39); ABX1 17 (Blumenfeld; Stats. 2011, ch. 12).

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

- Add a check box to item 2a to note whether the sentence will be served in state prison or county jail;
- Add a phrase to the text of item 2b to explain that a probation violation may result in a commitment to county jail, which may include a period of mandatory supervision under Penal Code section 1170(h)(5)(B);
- Add item 2c to note imposition of a split sentence under Penal Code section 1170(h)(5)(B);
- Add advisements to item 3b regarding postrelease community supervision, including the maximum custody time for each violation;
- Include mandatory and postrelease community supervisions to the advisement in item 3c regarding the impact of the conviction on other cases; and
- Revise item 3g to clarify that county jail terms under Penal Code section 1170(h) qualify as prison priors.

Implementation Requirements, Costs, and Operational Impacts

Expected costs are limited to the production of new forms, but only for courts that desire to use the form. No implementation requirements or operational impacts are expected.

Attachments and Links

Plea Form, With Explanations and Waiver of Rights—Felony (form CR-101)

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

- INSTRUCTIONS:**
- (1) Fill out this form if you want to plead guilty or no contest.
 - (2) Read this form carefully. For each item, if you understand and agree with what you read, put your initials in the box to the right of the item. For any item that does not apply to you or that you do not understand, leave the box blank.
 - (3) On page 6, sign and date the form under "DEFENDANT'S STATEMENT."
 - (4) Keep in mind that the court cannot give legal advice. If you have any questions about anything in this form, ask your attorney.

1. **CHARGES AND MAXIMUM TERM.** I want to plead guilty or no contest ("nolo contendere") to the charges and allegations listed below. I understand that the minimum and maximum penalties for the charges to which I am pleading guilty or no contest are listed below.

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

2. **PLEA AGREEMENT.** I understand that I must tell the court on this form about any promises anyone has made to me about the sentence I will receive or the sentence recommendations that will be made to the court. My attorney, the court, or the prosecutor has explained to me that if I plead guilty or no contest to the charges and admit the allegations listed above, the court will sentence me as follows:

- a. Check one: **State Prison** (or the Division of Juvenile Justice) **County Jail** for
- (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.

- 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.

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2. d. Narcotics Addiction Confinement

I understand that if the court finds that I am addicted to 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 sentence 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 (between \$200 and \$10,000)

2. \$ _____ restitution to actual victims

3. \$ _____ restitution to the State of California, Victims of Crime Fund

4. \$ _____ court security fees

5. \$ _____ other (specify): _____

6. \$ _____ other (specify): _____

7. 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

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

(3) If I abscond from supervision, this can extend the total time of parole or postrelease community supervision.

c. Effect of Conviction on Other Cases

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

d. Registration

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

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

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

e. Prints and DNA Samples

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

f. Serious or Violent Felony

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

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

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

j. Firearms

I understand that federal and state law prohibit a convicted felon from possessing firearms 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 convinced beyond a reasonable doubt that I am guilty.

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; and
- (6) Anything else I think is important to my case.

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6. b. **Questions**

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. **Discovery of New Facts**

I understand that the plea agreement in item 2 (on pages 1 and 2) is based on the facts before the court, and if the court discovers new facts, such as an additional prior felony conviction not listed on this form, the court may refuse to accept the plea agreement. If the court discovers new facts and refuses to accept this plea agreement, I understand that I will be allowed to withdraw my plea.

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.

If the box to the right is initialed, I agree that if I fail to appear on the date set for surrender 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 on the form and then initialed and signed the form.

Language: Spanish Other (specify): _____

INTERPRETER'S SIGNATURE

DATE

INTERPRETER'S NAME (TYPE OR PRINT)

DISTRICT ATTORNEY'S STATEMENT

I have read this form and understand the terms of the plea agreement.

I agree do not agree with the terms of the plea agreement and the indicated sentence.

ATTORNEY'S SIGNATURE

DATE

COURT'S FINDINGS AND ORDER

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

1. The defendant has read or has had read to him or her and understands each of the initialed items in this form.
2. The defendant understands the nature of the crimes and allegations listed in item 1 (on page 1) and the consequences of the plea and any admissions.
3. The defendant expressly, knowingly, understandingly, and intelligently waives his or her constitutional and statutory rights.
4. The defendant's plea, admissions, and waiver of rights are made freely and voluntarily.
5. A factual basis exists for the plea and admissions, or the defendant is pleading pursuant to a plea bargain under *People v. West*.

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

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

JUDGE'S SIGNATURE

DATE