

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Criminal Law Advisory Committee
Hon. Steven Z. Perren, Chair
Joshua Weinstein, Committee Counsel, 415-865-7688,
joshua.weinstein@jud.ca.gov

DATE: August 31, 2006

SUBJECT: Criminal Law: Optional Guilty Plea Form for Felony Cases (approve form
CR-101) (Action Required)

Issue Statement

Currently courts develop local plea forms, which vary county to county; there is no standardized statewide form or template for local courts to use in developing their own forms.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2007, approve form CR-101, *Plea Form, With Explanations and Waiver of Rights — Felony*, to assist courts in making complete records of guilty pleas.

The proposed form is attached at pages 3–9.

Rationale for Recommendation

The proposed optional guilty plea form is for felony cases and is designed for general use. While the form does not exhaustively address every possible scenario in a guilty plea, it does include the direct consequences of the plea and the most common advisements and warnings. The form includes sections for:

- The charges and maximum possible punishment;
- The terms of the plea agreement, if any;
- The consequences of the plea;
- The defendant's right to an attorney and other constitutional and statutory rights;
- The waiver of rights and other considerations to be made before the plea;
- The entry of the plea;

- Considerations after the plea, such as the date for the defendant to surrender; and
- Mandatory warnings.

The form is optional, so a court is free to continue to use its own form, to modify this form to conform to local needs and practice, or to use this proposed form in its current state.

Alternative Actions Considered

The Criminal Law Advisory Committee considered many alternatives, such as more or fewer nonmandatory advisements. This form, the committee agreed, struck a balance between incorporating the most common advisements and warnings, while not being overly lengthy.

The committee also considered not proposing a guilty plea form. The committee concluded, however, that providing an optional form that can be used as approved by the Judicial Council or modified as needed for local needs gave the courts more options.

Comments From Interested Parties

The form was circulated for 10 weeks in the spring 2006 cycle. Twenty comments were received. Of those, eight agreed with the proposal, nine agreed if amended, and three did not agree.

Most of the suggested changes were specific and technical. Many of the suggested stylistic changes were incorporated into the proposed form, as they clarified existing provisions. The most notable change was to the *Harvey* waiver provision on page 2 of the form by adding check boxes to clarify when there is such a waiver. Several of the suggestions, however, were not included because they would add new substantive provisions. As the form is seven pages long already, the committee declined to increase the length by including new provisions. Indeed, one of the people who did not agree with the proposal did so because the form was too long as it is. If a local court believes the suggested provisions are necessary, the form can be modified locally.

A chart summarizing the comments is attached at pages 10–26.

Implementation Requirements and Costs

Implementation would impose costs on parties or the court for copying new forms.

Attachments

<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</p> <p>STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:</p>	<p><i>FOR COURT USE ONLY</i></p> <p style="font-size: 24pt; font-weight: bold;">09-15-06</p>
<p>PEOPLE OF THE STATE OF CALIFORNIA</p> <p style="text-align: center;">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 or the judge.

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 not 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. **State Prison** (or the Division of Juvenile Justice) for:

- (1) _____ years and _____ months or
- (2) not less than _____ years and _____ months and/or not more than _____ years and _____ months.
- (3) Other: (*specify*):

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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 **state prison** for up to the "**Aggregate Maximum Time of Imprisonment**" specified in item 1.

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2 c. **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, narcotics and rehabilitation facility for up to the amount of time I would otherwise have served in prison.

d. **Open Plea**

- 1. I understand the maximum and minimum sentence for the charges and allegations set forth 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 (between \$200 and \$10,000)
- 2. \$ _____ restitution to actual victim(s)
- 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.

f. **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.

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)**

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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

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

- (1) I will be placed on parole for up to _____ years after my release.
- (2) If I violate any of the terms or conditions of my parole, I can be returned to **state prison** for up to one year for each violation, up to a maximum of _____ years.
- (3) If I abscond from parole supervision, this can extend the total time of parole 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 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 my local police agency or sheriff's department as

- (1) an arson offender.
- (2) a gang member.
- (3) a narcotics offender.
- (4) a sex offender.
- (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. I understand that registration as a sex offender is a life long requirement; I must register with the police or Sheriff's Department in the city or county in which I reside within five days of my birthday and within five days of any address change.

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, 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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i. Immigration Consequences

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.

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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 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 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 the 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 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): _____

Language: _____

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 plan 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

SPR06-24

Criminal Law: Optional Guilty Plea Form for Felony Cases (approve form CR-101)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Hon. Jeff Almquist Superior Court of Santa Cruz County 701 Ocean Street, Room 110 Santa Cruz	A	Y		
2.	Mr. Michael Aruell Deputy Public Defender El Dorado County Public Defender 630 Main Street Placerville	N	N	3(d) Registration paragraph is unintelligible	Agree. Paragraph reworded.
3.	Hon. Ronald L. Bauer Chair, Rules and Forms Committee Superior Court of Orange County P.O. Box 1994 Santa Ana	AM	Y	<p>The proposal was reviewed by court staff and the Rules and Forms Committee of the Orange County Superior Court. After discussion, the following comments are submitted for consideration:</p> <p>Page 1, section 1: At the end of the second line, change “not guilty” to “guilty” and “we contest” to “no contest.”</p> <p>Page 2, item (e) titled “Restitution, Statutory fees and assessments”: replace “Victim Restitution Fund” with “State Restitution Fund.”</p> <p>Page 2, section 2(g): change “plea agreement bargain” to “plea agreement.”</p> <p>Page 3, item (d) titled “Registration:” last sentence should read “I understand that registration as a sex offender is a life-long</p>	<p>Agree.</p> <p>Agree. Renamed “Restitution Fund”</p> <p>Agree.</p> <p>Agree.</p>

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				<p>requirement and I must register at the police or sheriff’s department in the city or county in which I reside within five days of my birthday and within five days of any address change.”</p> <p>Page 6, section 9(b): add lines for description of factual basis.</p> <p>Page 7, Attorney’s Statement: delete the words “...and refer the court to...” and end the sentence with the word “plea.”</p> <p>Page 7, Court’s Findings and Order: make this section optional for those bench officers who wish to sign the form; the current version suggests a judge’s signature is required.</p>	<p>Disagree. Attorney Stipulates to factual basis.</p> <p>Disagree. Stylistic only and present wording is clearer.</p> <p>Disagree. Court accepts plea by signing form.</p>
4.	Justice Roger W. Boren Administrative Presiding Justice Court of Appeal, Second Appellate District 300 South Spring Street Los Angeles	AM	N	<p>Optional Guilty Plea Form</p> <p>1. Charges and maximum term: I want to plead guilty or no contest (“nolo contendere”) to the charges and allegations listed below <u>including, if charged, the facts that make this offense a serious felony.</u> I understand that the minimum and maximum penalties for the charges to which I am pleading not guilty or we <u>no</u> contest are listed below.</p> <p>Reason: The addition of the words “including, if charged, the facts that make this offense a serious felony” gives effect to Penal Code section 969f, which applies where the defendant</p>	<p>Agree.</p>

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				<p>is charged with a serious felony. Penal Code section 969f permits the prosecution to charge in the accusatory pleading “the facts that make the crime constitute a serious felony,” in which case “[i]f the defendant pleads guilty of the offense charged, the question whether or not the defendant committed a serious felony as alleged shall be separately admitted or denied by the defendant.”</p> <p>This allegation is provided for the benefit of the prosecution “to prequalify a crime as a serious felony.” (<i>People v. Leslie</i> (1996) 47 Cal.App.4th 198, 204.) However, the allegation is frequently overlooked when a guilty plea is entered (see <i>ibid.</i>), and the additional language should be included on the guilty plea form.</p> <p>3f. <u>Serious or violent Felony:</u></p> <p>I understand that, <u>if this is a violent felony</u>, jail or prison conduct/work-time credit I may accrue will not exceed 15%.</p> <p>Reason: penal Code section 2933.1 imposes the 15% limitation only on violent felonies.</p> <p>4. <u>Right to an Attorney:</u></p> <p>I understand that I have the right to be represented by an attorney of my choice throughout the proceedings, and; <u>that if I cannot</u></p>	<p>Agree.</p> <p>Agree.</p>

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				<p>afford to hire one <u>an attorney</u>, the Court will appoint an attorney <u>one</u> to represent me at no cost.</p> <p>Reason: The advisement should avoid the suggestion that an indigent defendant is entitled to the appointment of counsel of his choice. (See <i>People v. Jones</i>(2003) 29 Cal.4th 1229, 1246.)</p> <p>I understand that there are dangers and disadvantages to giving up my right to an attorney and that is almost always unwise to represent myself. <u>I also understand that the</u> Court will not help me, give me special attention or treat me any differently from an experienced attorney.</p>	Disagree. Stylistic only.
5.	Ms. Julie Bowler Defense Attorney Fresno County Public Defender 1255 Fulton Mall, Ste. 252 Fresno	N	N	TIME!! WHERE are we to get the TIME to do this?!?! The form was not designed by a public defender, was it...? Sorry, it is simply not feasible. Please do not offer this form.	Disagree. Many, if not most, courts use forms of similar length.
6.	Ms. Mary Carnahan Criminal Division Program Manager Superior Court of Solano County 530 Union Avenue, Suite 200 Fairfield	A	N		
7.	Hon. Bruce A. Clark Superior Court of Ventura County	A	Y		

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
	800 South Victoria Avenue Ventura				
8.	Hon. Michael Dest Superior Court of San Bernardino San Bernardino	N	N	<p>There is a culture and custom developed over the years in California Courts. Why change it? Is there a rash of invalid pleas being taken or set aside because of currently defective plea forms? I think it is wrong that Judicial Council impose their seven page form in what we already have as an efficient and shorter form.</p> <p>Furthermore, this is not an Unlawful Detainer form with many fill-in-the-blanks. The fewer fill-in-the-blanks, the better and placement of all the terms in one area is better than having to fill-in-the-blanks throughout seven pages which does not even cover <i>Vargas</i> or <i>Cruz</i> or Appeal Waivers.</p>	Disagree. This form is optional and therefore is not being imposed on any court. Your court may use its own form or modify this one to suit local needs or customs.
9.	Ms. Janice Y. Fukai Alternate Public Defender 35 Hall of Records 320 W. Temple Street Los Angeles	AM	Y	<p>The majority of the proposed optional CR-101 form would be acceptable if it were modified as recommended below. However, there are certain sections which are objectionable, regardless of modification.</p> <p>The primary focus of the proposed “Optional Plea Form for Felony Cases” is the “waiver of rights” rather than the “explanation” of said rights. Most problematic is the inference that the waiver of certain rights or the stipulation to certain facts is mandatory before a plea may be accepted. There are many instances in which the</p>	

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				<p>language of this form misleads the reader by presenting an optional waiver of a right as a required waiver, or mandating a factual stipulation to the existence or non-existence of a fact that would preclude post-conviction relief, even though the law does not mandate such a waiver or factual stipulation.</p> <p>Section 2: Plea Agreement The particular subsections of Section 2 below are objectionable because of the reasons discussed below. Alternatively, I propose the following changes:</p> <p>Subsection (g): Dismissal of Other Counts</p> <p><u>Current Version:</u> <i>“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></p> <p>This is an incorrect statement of the law. Absent a <i>Harvey</i> waiver, obtained by the prosecution as part of a plea agreement, dismissed counts and facts pertaining solely to them, may not be considered by the trial court when determining the restitution amount and the appropriate sentence. (<i>People v. Harvey</i> (1979) 25 Cal.3d 754)</p>	<p>Agree. Check box added to clarify <i>Harvey</i> waiver.</p>

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				<p>A more appropriate advisement would provide that this section is applicable only in situations where the defendant has specifically entered into a plea agreement with the prosecution, which would allow facts pertaining to dismissed counts to be considered in determining the restitution amount and the appropriate sentence.</p> <p><u>Recommended Changes:</u> <i>“I understand that the sentencing judge may not consider facts pertaining to dismissed counts when determining the restitution amount and the appropriate sentence, absent a contrary agreement.</i></p> <p><i>“I understand and agree that pursuant to my plea agreement, the sentencing judge may consider facts pertaining to dismissed count(s) _____ when determining the restitution amount and/or appropriate sentence.”</i></p> <p>Section 3: Consequences of my Plea</p> <p>Subsection (1): Serious or Violent Felony</p> <p><u>Current Version:</u> <i>“I understand that jail or prison conduct/work-time credit I may accrue will not exceed 15%.”</i></p> <p><u>Recommended Changes:</u> <i>“I understand that if I am convicted of certain felony offenses, the jail or prison conduct/work-</i></p>	<p>Agree. Changed wording to apply only to violent felonies.</p>

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				<p><i>time credit I may accrue will not exceed 15%. Count _____ is such an offense.”</i></p> <p>Subsection (h): Driver’s License and Vehicle Forfeiture</p> <p><u>Current Version:</u> <i>“I understand that my privilege to drive a motor vehicle may be revoked or suspended by the Court or the Department of Motor Vehicles and my vehicle may be ordered forfeited if it was involved in the offense.”</i></p> <p>This advisement is confusing. First, a person who may have his driving privilege revoked or suspended may not, and probably will not, be subject to the statutory provisions which require forfeiture of a vehicle. There are many instances in which a person may be subject to a driver’s license suspension or revocation, yet few instances in which the law allows for a vehicle forfeiture.</p> <p>The penalty of a vehicle forfeiture is generally limited to a defendant who is the registered owner of vehicle that was used as an instrument to facilitate the commission of a drug trafficking offense or that was driven by a defendant who lacked a valid driver’s license and who was previously convicted of a specified misdemeanor. (Health and Safety Code §11470(e); Vehicle Code 14607.6(a).)</p>	<p>Disagree. General advisement is necessary to keep forms reasonable length.</p>

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				<p><u>Recommended Changes:</u> <i>“I understand that if I am convicted of specified offenses, the Court or the Department of Motor Vehicles may revoke or suspend my privilege to drive. Count _____ is such an offense.</i></p> <p><i>“I understand that if I am convicted of specified offenses, my vehicle may be ordered forfeited if it was involved in the offense. Count _____ is such an offense.”</i></p> <p>Subsection (I): Immigration Consequences</p> <p><u>Current Version:</u> <i>“The offenses that will result in such immigration action include but are not limited to an aggravated felony, conspiracy, controlled substance offense, a firearm offense, and under certain circumstances, a moral turpitude offense.”</i></p> <p>This sentence is inaccurate. First, the listed offenses trigger different immigration penalties. Therefore, to state that the listed offenses “will result in such immigration action” is wrong. The word “will” should be replaced with “may.” For example, an aggravated felony and a firearm offense will trigger deportation, but will not necessarily render a person inadmissible (excluded from lawful admission.) (8 U.S.C. §1 182(a)(2), 1227(a)(2).)</p>	<p>Agree. Warning changed to (1) states that certain offenses will lead to a list of possible consequences and (2) conspiracy was removed from list.</p>

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				<p>Second, conspiracy will not always trigger immigration penalties. Conspiracy to commit an aggravated felony constitutes an aggravated felony. However, conspiracy to commit a non-aggravated felony offense does not constitute an aggravated felony. (8 U.S.C. 1 101(a)(43)(U).) This is also true for crimes involving moral turpitude. Conspiracy to commit a crime involving moral turpitude will be treated as a moral turpitude offense. (McNaughton v. INS 612 F.2d 457, 459 (9th Cir., 1980))</p> <p><u>Recommended Changes:</u> <i>“The offenses that may result in such immigration action include but are not limited to an aggravated felony, controlled substance offense, a firearm offense, and under certain circumstances, conspiracy and moral turpitude offenses.”</i></p> <p>Section 6: Before the plea</p> <p>Subsection (d): Medication/Controlled Substances</p> <p><u>Current Version:</u> <i>“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</i></p>	

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				<p><i>for the following:”</i></p> <p>This section attempts to minimize or eliminate future claims by the defendant that the plea is legally invalid because his/her ability to exercise judgment was impaired at the time he/she pled guilty or no contest as a result of a medical condition, and/or consumption of medication, illicit drugs and/or alcohol. In its efforts to lock in the defendant to the plea, it places an unfair, if not illegal, burden on the defendant to stipulate away any claims that the plea was not knowing, intelligent, and voluntary.</p> <p>First it requires the defendant to offer a factual stipulation that although he/she is taking medication, the medication does not “affect my ability to understand this and the consequences of my plea...” This requires the defendant to make render a medical opinion. This is nonsensical. A medical opinion rendered by an individual who has no medical training and who may also be suffering from adverse side effects of a prescribed medication is not legally binding on the issue.</p> <p>Moreover, the section is confusing, specifically, the segment that reads, “am not suffering from any medical condition, except for the following...” Again, this places an undue burden on the defendant to self-diagnose and attest to</p>	<p>Disagree. This is a standard statement made by defendants at pleas.</p>

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				<p>his good health, or at least to bad health which cannot form the basis for withdrawal of his plea. This section should be deleted.</p> <p>Section 10: After the plea</p> <p>Subsection(a): Surrender</p> <p><u>Current version:</u> <i>“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 without 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 to withdraw my plea, and I may be sentenced up to the maximum allowed by law.”</i></p> <p>This section should be deleted. If the parties agree to a specific sanction for nonappearance, the court should acknowledge the agreement on the record at the time of the plea. Otherwise, this section serves no purpose but to unnecessarily induce a defendant to waive his right to withdraw a plea-bargained plea when a court refuses to accept the plea bargain based on the defendant’s failure to appear.</p> <p>The language employed to explain the “advisement” implies that unless the defendant</p>	<p>Agree that the current language and format is misleading. Form revised and reworded to clarify.</p>

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				<p>agrees to be sentenced pursuant to an “open plea” in the event he fails to appear without legal justification, the court will not allow the defendant to surrender at a later date. Such implications are not only misleading, but more significantly, they directly contradict the protections afforded to criminal defendants by the California Supreme Court in <i>People v. Cruz</i> and Penal Code 1192.5 (<i>People v. Cruz</i>, supra, 44 Cal.3d 1247):</p> <p>“First, when a defendant fails to appear at sentencing after entering a bargained plea with no discussion about a specific sanction for nonappearance, he or she is entitled to withdraw the plea if the court refuses to honor the plea bargain. Second, the same rule applies when, during the plea proceedings but after the parties have negotiated the basic plea bargain, the court imposes an additional condition providing a sanction for nonappearance. Third, when the parties themselves agree as part of the plea bargain to a specific sanction for nonappearance, the court need not permit the defendant to withdraw his or her plea but may invoke the bargained-for sanction.” (<i>People v. Cadillac</i> (1997) 60 Cal.App.4th 445, 45 1-452; see also <i>People v. Cruz</i>, supra, 44 Cal.3d 1247, 1250)</p>	
10.	Ms. Janet Garcia Manager, Planning & Research Unit	A	Y		

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	Superior Court of Los Angeles County 111 North Hill Street Los Angeles				
11.	Mr. Robert Hirth Chief Defense Attorney Madera Alternate Defense Madera	AM	N	Add to 3(d) Code Section for registration. This form should aid the court by reducing the number of motion for withdrawal of plea by detailing the plan minutia.	Disagree. No code section referenced to maintain flexibility.
12.	Mr. Dennis B. Jones Court Executive Officer Superior Court of Sacramento County 720 9 th Street Sacramento	AM	Y	We suggest that the form be mandatory rather than optional. If not, local jurisdictions may choose to use their own forms, particularly if they are not as lengthy as the proposed form. Also, because the form is so lengthy and somewhat complex, the average party would need considerable legal guidance and support in completing it.	Disagree. Courts need flexibility to adapt forms to local customs.
13.	Mr. Michael P. Judge, Public Defender Los Angeles County Public Defender 210 West Temple St., Ste. 19-513 Los Angeles	AM	Y	NOTE: PLEASE SEE COMMENTS FROM MS. JANICE Y. FUKAI (identical to Mr. Judge's comments)	See responses to Janice Fukai, above.
14.	Ms. Tressa S. Kentner Chief Executive Officer Superior Court of San Bernardino County 172 W. 3 rd Street, 2 nd Floor San Bernardino	A	N		
15.	Mr. Nelson Lu	A	N	Agree with proposed changes	

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	Deputy Public Defender San Joaquin County Public Defender's Office Stockton				
16.	Ms. Debra Meyers Chief of Staff Counsel Services Superior Court of San Bernardino County 172 W. 3 rd Street, 2 nd Floor San Bernardino	A	N		
17.	Mr. Stephen Munkelt, Attorney 206 Providence Mine Road, Ste. 218 Nevada City	AM	N	In general this form is more complete and more balanced than most local felony forms. However it does not have a clear statement concerning “conditional pleas” under PC 1192.5 and the right to withdraw plea if conditions not met. Also, #2(g) seems to have mandatory “Harvey Waiver” for all cases (no blank or box to indicate assent.)	Agree. Check box added to clarify <i>Harvey</i> waiver.
18.	Ms. Sharon Ngim Staff Liaison to the Standing Committee on the Delivery of Legal Services (SCDLS) The State Bar of California 180 Howard Street San Francisco	AM	Y	SCDLS supports the proposed simplification in SPR06-24, which makes criminal felony guilty plea forms more user-friendly, but urges the Judicial Council to carefully review whether the current proposed form sufficiently explains the significant impact on immigration status for non-citizens in entering a guilty plea. Given the current debate in Congress on immigration reform which has focused heavily on increasing penalties and punishments to immigrants found guilty of even minor crimes,	Disagree. Immigration consequences are conveyed as clearly as possible, given length constrictions.

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				<p>the immigration consequences of pleading guilty must be clearly conveyed.</p> <p>Additionally, we strongly urge that the Judicial Council provide written translations in at least the major languages spoken in California and ensure the oral interpretation of this form for all limited English speaking defendants regardless of language, again because of the significant immigration consequences for non-citizens.</p>	Disagree at present. Interpreters are available in court to review form with defendants. However, staff will investigate possible future translations.
19.	Mr. Michael M. Roddy Executive Officer San Diego County Superior Court 220 West Broadway San Diego	A	Y		
20.	Ms. Catherine Stephenson Deputy District Attorney San Diego County District Attorney's Office San Diego	AM	Y	<p>It is important to add the following:</p> <ol style="list-style-type: none"> 1. A place for the prosecutor's signature. The prosecutor has the important job of reviewing the plea form for correctness and the signature indicates the form is correctly filled out and represents the plea bargain accurately. 2. There should be a place for the defendant's thumb print. We use prints on the change of plea forms in San Diego and they are very helpful in the future when we have to prove identity of the person convicted. 	<p>Agree.</p> <p>Disagree. Can be added locally if necessary, but not added in effort to keep form reasonable length.</p>