

**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
Arturo Castro, Committee Counsel, 415-865-7702,
arturo.castro@jud.ca.gov

DATE: July 28, 2009

SUBJECT: Criminal Law: Felony Plea Form (revise Judicial Council form CR-101) (Action Required)

Issue Statement

The proposed revisions to the *Plea Form, With Explanations and Waiver of Rights—Felony* (form CR-101) delete an incomplete advisement regarding postconviction sex offender registration requirements.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2010, revise the *Plea Form, With Explanations and Waiver of Rights—Felony* (form CR-101) to delete the following advisement from item 3.d.: “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.”

The text of the proposed revisions to the *Plea Form, With Explanations and Waiver of Rights—Felony* (form CR-101) is attached at pages 3–9.

Rationale for Recommendation

The current *Plea Form, With Explanations and Waiver of Rights—Felony* (form CR-101) contains the following advisement regarding mandatory sex offender registration resulting from the plea (at item 3.d.): “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.”

However, the advisement is incomplete. Penal Code section 290 generally requires sex offender registration “within five *working* days” of establishing a residence. (Pen. Code, § 290(b); italics added.) In addition, registration requirements differ considerably depending on the status of the offender. For example, there are specific requirements for offenders who are transient (Pen. Code, § 290.011) and recently released from confinement (Pen. Code, § 290.015). The proposed revisions delete this incomplete advisement from the form.

Alternative Actions Considered

The committee considered adding advisements to reflect all possible registration requirements but declined to do so because such requirements vary considerably and are frequently modified.

Comments From Interested Parties

The proposed revisions were circulated as part of the spring 2009 comment cycle. A total of seven comments were received. Of those, five agreed with the proposal and two agreed with the proposal if modified. A chart with all the comments received and the committee responses to each is attached at pages 10–13.

Notably, two commentators asked to expand—not delete—the advisement regarding sex offender registration deadlines because of their importance as lifelong requirements. The committee declined to expand the advisement because such requirements vary considerably and are frequently modified. An inaccurate or outdated form may inadvertently increase claims of invalid pleas by defendants. In addition, the proposal retains and emphasizes in bold the advisement that sex registration is a lifelong requirement.

Other substantive suggestions received include (a) deleting certain rights from the advisements because they are not required by law; (b) deleting questions about whether the defendant is under the influence of alcohol, medication, or controlled substances because those questions are overly intrusive and unnecessary; and (c) adding space on the form for the court to note the factual basis for the plea. These suggestions exceed the scope of this proposal and were deferred for consideration by the committee at a future meeting.

Implementation Requirements and Costs

Expected costs would be limited to making the revised forms available for use by the courts and any associated judicial officer and court staff training.

Attachments

<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. **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, 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 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.

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 the local police agency or sheriff's department in the city or county in which I reside as:

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

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

e. Prints and DNA Samples

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

f. Serious or Violent Felony

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

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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*): _____

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

SPR09-24**Criminal Law: Felony Plea Form** (revise Judicial Council form CR-101)

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

	Commentator	Position	Comment	Committee Response
1.	Katherine Lynn Managing Attorney Court of Appeal, Second Appellate District	A	No specific comment.	No response required.
2.	Michael G. Yoder President Orange County Bar Association	AM	Some advisement of Penal Code section 290 registration should be given in the appropriate case as the defendant will be legally obliged to register as a sex offender for life.	Although the proposed revisions remove an incomplete advisement, the form retains the advisement that the requirement to register as a sex offender is a lifelong requirement.
3.	Deborah A. Kwast Public Defender Orange County Public Defender's Office	AM	<p>We agree with the Criminal Law Advisory Committee that the current wording of the advisement on the plea form is incomplete. However, we believe that an expanded advisement is preferable to the advisement proposed by the committee. Thus, we propose the addition of the following sentence to section 3d of the form:</p> <p>“I understand that if I am required to register as a sex offender, I will have to so register within five working days of any change of residence and within five working days of my birthday every year. If I am a transient, I will have to register every thirty days.”</p> <p>There would be several benefits to including</p>	Although the committee appreciates the thoughtful comment and agrees that expanded advisements would benefit certain defendants, the committee declines to add advisements to reflect all possible registration requirements. Such requirements vary considerably and are frequently modified. An inaccurate or outdated advisement on the form may inadvertently increase claims of invalid pleas by defendants.

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Criminal Law: Felony Plea Form (revise Judicial Council form CR-101)

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

	Commentator	Position	Comment	Committee Response
			<p>such expanded language in the plea form. First, the registration requirement is usually the longest-lasting and often the most problematic consequence of a plea to a sex offense. It is thus crucial that criminal defendants agreeing to registration as a condition of their pleas do so with a clear understanding that this condition means that they will have to take affirmative action to fulfill it at least once a year. We have represented clients charged with violation of Penal Code section 290 who simply did not have adequate knowledge of the impact of the registration requirements on their lives until after their guilty pleas.</p> <p>Second, the language will help to ensure that defendants will know what their obligations under Penal Code section 290 are after judgment has been imposed. It is true, of course, that the requirements of registration are explained to them at the time that they register. However, defendants have varying levels of intelligence, education, and sophistication. There are those, therefore, for who any difference between what they read or hear in court and what they are told at the time of registration will prove confusing. The best way to ensure that the maximum possible number</p>	

SPR09-24**Criminal Law: Felony Plea Form** (revise Judicial Council form CR-101)

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	Commentator	Position	Comment	Committee Response
			of people required to register do in fact appropriately register is to keep the language of the plea form as close to the language of the registration instructions that defendants will subsequently receive as possible.	
4.	Michael D. Schwartz Special Assistant District Attorney Ventura County District Attorney's Office	A	<p>I agree with the proposed changes to form CR-101 and suggest additional changes to the existing form. I would delete items 5b (right to court trial) and 5e (right to produce evidence to present a defense) because the law does not require a waiver of these rights. (See <i>In re Yurko</i> (1974) 10 Cal.3d 857, 861.) Including these on the plea form unnecessarily complicates and lengthens the form. It also could create an expectation that such waivers are routine, and the courts could later consider this practice to be a legal requirement and set aside pleas that do not have them. The references to these two rights should also be deleted in item 8.</p> <p>Item 6d is intrusive if the defendant takes it seriously and lists all medications and medical conditions. Challenges to guilty pleas on this basis are rare; I do not believe I have ever seen a guilty plea challenged on these grounds. I suggest that this item be deleted, or that it be shortened to state, "I</p>	This comment exceeds the scope of the proposal. The committee appreciates the suggestion, however, and will separately consider it at a future meeting.

SPR09-24**Criminal Law: Felony Plea Form** (revise Judicial Council form CR-101)

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

	Commentator	Position	Comment	Committee Response
			have not recently consumed any alcohol or drugs that affect my ability to understand this form and the consequences of my plea.”	
5.	Superior Court of Los Angeles County	A	No specific comment.	No response required.
6.	Superior Court of Riverside County Carrie Snuggs Regional Operations Director	A	On the last page of the form (7), under “COURTS FINDINGS AND ORDER”, there are 5 listed findings the judge must make. The 5th and final finding is: “A factual basis exists for the plea and admissions, or the defendant is pleading pursuant to a plea bargain under <i>People v. West</i> .” It might be helpful (especially to the Court of Appeal, but ultimately to the superior court as well), to include boxes or space for the judge to explain briefly where the factual basis came from, e.g., from a police report or accusatory pleading that the parties stipulated to, etc. (Pen. Code, § 1192.5; <i>People v. Holmes</i> (2004) 32 Cal.4th 432, 441.)	This comment exceeds the scope of the proposal. The committee appreciates the suggestion, however, and will separately consider it at a future meeting.
7.	Superior Court of San Diego County Michael M. Roddy Executive Officer	A	No specific comment.	No response required.