



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: June 25-27, 2015

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**Title**

Criminal Procedure: Update Judicial Council  
Misdemeanor Domestic Violence Plea Form  
Citations

**Agenda Item Type**

Action Required

**Effective Date**

July 1, 2015

**Rules, Forms, Standards, or Statutes Affected**

Revise form CR-102

**Date of Report**

May 6, 2015

**Recommended by**

Criminal Law Advisory Committee  
Hon. Tricia Ann Bigelow, Chair

**Contact**

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### Executive Summary

The Criminal Law Advisory Committee recommends revising an optional Judicial Council form used to facilitate the taking of guilty or no contest pleas in misdemeanor domestic violence cases to update two citations to statutes that address prohibitions on owning, using, or possessing firearms and ammunition within 10 years of a misdemeanor domestic violence conviction.

### Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective July 1, 2015, revise the *Domestic Violence Plea Form with Waiver of Rights (Misdemeanor)* (form CR-102) to:

1. Replace the citation to Penal Code section 12021 in provision 7f with a citation to Penal Code section 29805, to reflect the current statute that addresses prohibitions on owning, using, or possessing firearms within 10 years of a misdemeanor domestic violence conviction; and
2. Replace the citation to Penal Code section 12316 in provision 7f with a citation to Penal Code section 30305, to reflect the current statute that addresses prohibitions on owning,

using, or possessing ammunition within 10 years of a misdemeanor domestic violence conviction.

The revised form is attached at pages 3–5.

### **Previous Council Action**

The *Domestic Violence Plea Form with Waiver of Rights (Misdemeanor)* (form CR-102) was adopted on April 29, 2011, with a July 1, 2011, effective date.

### **Rationale for Recommendation**

The form CR-102 is an optional form designed to promote standardized pleas in misdemeanor domestic violence cases statewide by including all necessary and common advisements, waivers, and consequences of the plea.

Penal Code section 29805, added by Senate Bill 1080 (Committee on Public Safety; Stats. 2010, ch. 711), § 6.76, operative January 1, 2012, continues former section 12021(c)(1) without substantive change.

Penal Code section 30305, added by SB 1080, § 6, operative January 1, 2012, continues former section 12316 without substantive change: Subdivision (a) of section 30305 continues former section 12316(b)(1) & (3) without substantive change; subdivision (b) continues former section 12316(b)(4)–(5) without substantive change; subdivision (c) continues former section 12316(d)(1) without substantive change; subdivision (d) continues former section 12316(d)(2)–(3) without substantive change.

To reduce confusion and enhance the information on the forms, the committee recommends revising the form to update these two citations to reflect the current statutes.

### **Comments, Alternatives Considered, and Policy Implications**

The committee considered postponing or declining to recommend any form revisions in light of the severe economic circumstances faced by courts. The committee, however, decided to recommend the updated citations to current law. The revisions would not impose any significant change in court practices; rather, the recommended revisions are designed to improve procedures for misdemeanor domestic violence plea agreements by ensuring that provisions setting forth the consequences of the plea reflect current law.

### **Implementation Requirements, Costs, and Operational Impacts**

Expected costs and implementation requirements are limited to the production of new forms. No other implementation requirements or operational impacts are expected.

### **Attachments and Links**

1. Form CR-102, at pages 3–5

<p><b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b></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><b>PEOPLE OF THE STATE OF CALIFORNIA</b></p> <p style="text-align: center;">v.</p> <p>DEFENDANT:</p>	
<p><b>DOMESTIC VIOLENCE PLEA FORM WITH WAIVER OF RIGHTS (Misdemeanor)</b></p>	<p>CASE NUMBER:</p>

**Instructions:**

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

INITIALS

1. **Charges and Maximum Penalties.** I want to plead guilty or no contest to the charges listed below. I understand that the maximum penalties for the charges to which I am pleading guilty or no contest are listed below.

COUNT	CHARGES (SECTION & DESCRIPTION)	MAXIMUM PENALTY (FINE & JAIL)

2. **Prior Convictions.** I understand that I am also charged with a prior conviction in case number(s):

3. **Probation Violations.** I understand that I am also charged with a violation of probation in case number(s):

4. **Right to an Attorney** (Leave this box blank if you have an attorney). I understand that I have the right to an attorney of my choice to represent me throughout the proceedings. If I cannot afford to hire an attorney, the court will appoint one to represent me. **I hereby give up my right to be represented by an attorney.**

5. **Other Constitutional Rights.** I understand that I am entitled to each of the following rights concerning the charges and prior convictions (if any) listed in items 1 and 2 (above):

a. **Right to a jury trial.** I understand that I have a right to a speedy and public jury trial. At the trial, I would be presumed to be innocent and I could not be convicted unless, after hearing all of the evidence, 12 impartial jurors chosen from the community were convinced beyond a reasonable doubt that I am guilty.

b. **Right to confront and cross-examine witnesses.** I understand that I have the right to confront and cross-examine all witnesses testifying against me. This means that the prosecution must produce the witnesses in court to testify under oath in my presence and I or my attorney may question them.

c. **Right to remain silent and not incriminate myself.** I understand that I have the right to remain silent and my silence cannot be considered as evidence against me. I understand that I also have the right not to incriminate myself and I cannot be forced to testify.

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:
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INITIALS

6. **Rights for Probation Violations** *(Leave this box blank if you are not charged with a probation violation).*  
 I understand that I have all the constitutional rights listed above for all probation violations charged against me, except that I do not have a right to a jury trial, only a court hearing before a judge.
7. **Consequences of My Plea**
- a. **No contest plea.** I understand that a no contest plea has the same effect as a guilty plea except that it cannot be used against me in a civil case that derives from an act on which this prosecution is based unless the offense is punishable as a felony.
- b. **Effect of conviction on other cases.** I understand that a conviction in this case may be used to increase my punishment for future domestic violence convictions and may constitute a violation of any other current grant of parole or probation, which may result in additional punishment.
- c. **Mandatory minimum conditions of probation.** I understand that if I am granted probation, the terms and conditions will include *at least* all of the following (see Pen. Code, § 1203.097):
- (1) A minimum of either 36 months (3 years) or 48 months (4 years) of probation;
  - (2) A criminal court protective order that may include residence exclusion or stay-away conditions;
  - (3) Booking within one week of sentencing if I have not already been booked;
  - (4) Several statutory fines, fees, and assessments, including a domestic violence fee, restitution fine, probation revocation fine (stayed), criminal conviction assessment, and court security fee;
  - (5) Successful completion of an appropriate batterer's treatment program lasting at least 52 weeks;
  - (6) Community service;
  - (7) Restitution to the victim (if applicable);
  - (8) An order to not own, possess, purchase, or receive any firearms;
  - (9) An order to relinquish any firearms in my possession or control; and
  - (10) Other: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
- d. **Effect of future probation violation.** I understand that if I violate any of the terms or conditions of probation, I may be returned to court and sentenced up to the maximum punishment on each charge as indicated in item 1.
- e. **Immigration consequences.** I understand that if I am not a citizen of the United States, my plea of guilty or no contest may or, with certain offenses, **will** result in my deportation, exclusion from admission and reentry to the United States, and denial of naturalization and amnesty, and that the appropriate consulate may be informed of my conviction.
- f. **Firearm prohibition.** I understand that a conviction in this case may prohibit me from owning, using, or possessing firearms and ammunition within 10 years under Penal Code sections **29805** and **30305**.
- g. **Child custody consequences.** I understand that a conviction in this case may result in a rebuttable presumption that an award of sole or joint physical or legal custody of a child is detrimental to the best interest of the child under Family Code section 3044.
- h. **Other consequences** *(specify):* \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
8. **Before the Plea**
- a. **Discussion with my attorney** *(Leave this box blank if you are not represented by an attorney).* Before entering this plea, I have had a full opportunity to discuss with my attorney the facts of the case, the elements of the charged offenses and prior convictions (if any), any defenses that I may have, my constitutional and statutory rights and waiver of those rights, the consequences of this plea, and anything else I think is important to my case.
- b. **Questions.** I have no further questions for the court or for my attorney with regard to my plea and admissions in this case or any of my rights or anything else on this form.
9. **Waiver of Constitutional Rights.** For each of the charges, prior convictions (if any), and probation violations (if any) listed in items 1, 2, and 3, I give up my right to a jury trial, my right to a court hearing, my right to confront and cross-examine witnesses, and my right to remain silent and not to incriminate myself. I understand that I am, in fact, incriminating myself with my plea.
10. **The Plea** *(check one).* I freely and voluntarily plead  GUILTY  NO CONTEST to the charges listed in item 1. I offer my plea with full understanding of everything in this form. No one has made any threats; used any force against me, my family, or loved ones; or made any promises to me, except as listed in this form, in order to convince me to plead guilty or no contest.

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- 11. **Prior Convictions.** I freely and voluntarily admit the prior convictions (if any) listed in item 2, and I understand that this admission may increase the penalties that are imposed on me.
- 12. **Probation Violations.** I freely and voluntarily admit the probation violations (if any) listed in item 3.
- 13. **Sentencing.** I understand that I have a right to delay my sentencing at least 6 hours and as long as 5 days after my plea. I give up this right and agree to be sentenced at this time.

**INITIALS**


**DEFENDANT'S STATEMENT**

I have read or have had read to me this form and have initialed each of the items that applies to my case. If I have an attorney, I have discussed each item with my attorney. By putting my initials next to the items in this form, I am indicating that I understand and agree with what is stated in each item that I have initialed. The nature of the charges, possible defenses, and the effects of any prior convictions and probation violations have been explained to me. I understand each of the rights outlined above and I give up each of them to enter my plea.

Defendant's Signature	Date
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**ATTORNEY'S STATEMENT**

I am the attorney of record for the defendant. I have reviewed this form with my client. I have explained each of the items in the form, including the defendant's constitutional and statutory rights, to the defendant and have answered all of his or her questions with regard to those rights, the other items in this form, and the plea agreement. I have also discussed the facts of the case with the defendant and have explained the nature and elements of each charge, any possible defenses to the charges, the effect of any prior convictions and probation violations, and the consequences of the plea.

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 interpreted 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
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**COURT'S FINDINGS AND ORDER**

The court, having reviewed this form and having orally examined the defendant, finds that (a) the defendant has read or been read and understands each of the initialed items on this form; (b) the defendant understands the nature of the crimes and allegations listed in items 1, 2, and 3 and the consequences of the plea and any admissions; (c) the defendant expressly, knowingly, understandingly, and intelligently waives his or her constitutional and statutory rights; and (d) the defendant's plea, admissions, and waiver of rights are made freely and voluntarily.

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

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

Signature of the Court	Date
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