

Title	Criminal Law: Misdemeanor Domestic Violence Plea Form (approve form CR-102)
Summary	A new form, the <i>Domestic Violence Plea Form With Waiver of Rights (Misdemeanor)</i> (form CR-102) is proposed for optional use to provide a standardized statewide plea form to facilitate the taking of guilty or no contest pleas in misdemeanor domestic violence cases.
Source	Criminal Law Advisory Committee Hon. Steven Z. Perren, Chair
Staff	Arturo Castro, Attorney, 415-865-7702, arturo.castro@jud.ca.gov
Discussion	<p>There is currently no Judicial Council form to facilitate the taking of guilty or no contest pleas in misdemeanor domestic violence cases. Instead, many courts have developed local plea forms, many of which vary significantly.</p> <p>The proposed form has been developed in conjunction with the Domestic Violence Practice and Procedure Task Force. Proposed for optional use, the form is designed to standardize and facilitate the taking of guilty or no contest pleas in misdemeanor domestic violence cases by including all necessary and commonly used data elements.</p> <p>Although the proposed form does not address every possible guilty plea scenario involving domestic violence misdemeanors, it includes the most common advisements and direct consequences of the plea. The proposed form includes (1) a section for the charges and maximum possible punishments; (2) the direct consequences of the plea, including any probation violations; (3) the defendant’s important constitutional and statutory rights and explicit waivers of those rights; (4) considerations made before entry of the plea; (5) a list of the mandatory minimum conditions of probation if granted; (6) signed statements by the defendant, defendant’s attorney, and interpreter, if any; and (7) the court’s findings and order.</p> <p>As an optional form, form CR-102 would promote standardized pleas in misdemeanor domestic violence cases statewide without requiring local courts to abandon use of any locally developed forms already in use.</p>
	Attachment

SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	FOR COURT USE ONLY
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	
DOMESTIC VIOLENCE PLEA FORM WITH WAIVER OF RIGHTS (Misdemeanor)	CASE NUMBER:

INSTRUCTIONS:

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

INITIALS

1. **CHARGES, PRIORS, AND MAXIMUM PENALTIES:** I want to plead guilty or no contest to the charges listed below. I understand that the minimum and maximum penalties for the charges that I am pleading guilty or no contest to are listed below. If applicable, I also want to admit the prior convictions listed below.

COUNT	CHARGES (SECTION & DESCRIPTION)	MINIMUM PENALTY		MAXIMUM PENALTY		PRIOR CONVICTIONS
		FINE	JAIL	FINE	JAIL	

2. **PROBATION VIOLATIONS:** I understand that I am also charged with a violation of probation in case number(s):

3. **RIGHT TO AN ATTORNEY** (Leave this box blank if you are represented by 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.**

4. **OTHER CONSTITUTIONAL RIGHTS:** I understand that I am entitled to each of the following rights as to the charges and prior convictions (if any) listed in item 1 (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.

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INITIALS

d. **Right to Produce Evidence:** 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.

5. **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.

6. **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 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.

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:

- (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 and fees, including a minimum domestic violence fee of \$400 and a restitution fine of \$100 to \$1,000;
- (5) Successful completion of an appropriate counseling 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. **Other Consequences** *(specify):* _____

7. **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.

8. **WAIVER OF CONSTITUTIONAL RIGHTS:** For each of the charges and prior convictions listed in item 1 and probation violations (if any) listed in item 2, I give up my right to a jury trial, my right to a court hearing, my right to confront and cross-examine witnesses, my right to remain silent and not to incriminate myself, and my right to produce evidence, including my right to testify on my own behalf. I understand that I am, in fact, incriminating myself with my plea.

9. **THE PLEA** *(check one):* I freely and voluntarily plead GUILTY NO CONTEST to the charges listed in item 1. 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.

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10. **PRIOR CONVICTIONS:** I freely and voluntarily admit the prior convictions (if any) listed in item 1 and I understand that this admission may increase the penalties that are imposed on me.

INITIALS

11. **PROBATION VIOLATIONS:** I freely and voluntarily admit the probation violations (if any) listed in item 2.

12. **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.

DEFENDANT'S STATEMENT

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

Defendant's Signature

Date

ATTORNEY'S STATEMENT

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

Attorney's Signature

Date

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

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 and 2 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; (d) the defendant's plea, admissions, and waiver of rights are made freely and voluntarily; and (e) a factual basis exists for the plea and admissions.

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

Item SPR09-21 Response Form

Title: **Criminal Law: Misdemeanor Domestic Violence Plea Form** (approve form CR-102)

- Agree with proposed changes
- Agree with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

Internet: <http://www.courtinfo.ca.gov/invitationstocomment/>

Email: invitations@jud.ca.gov

Mail: Ms. Camilla Kieliger
Judicial Council, 455 Golden Gate Avenue
San Francisco, CA 94102

Fax: (415) 865-7664, Attn: Camilla Kieliger

DEADLINE FOR COMMENT: 5:00 p.m., Wednesday, June 17, 2009
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Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.