



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For meeting on October 26, 2012

Title	Agenda Item Type
Criminal Justice Realignment: Felony Waiver and Plea Form	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Revise form CR-101	January 1, 2013
Recommended by	Date of Report
Criminal Law Advisory Committee Hon. Steven Z. Perren, Chair	August 13, 2012
	Contact
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Executive Summary

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

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2013, revise *Plea Form, With Explanations and Waiver of Rights—Felony* (CR-101) to:

1. Add a check box to item 2a to note whether the sentence will be served in state prison or county jail;
2. Add a phrase to the text of item 2b to explain that a probation violation may result in a commitment to county jail, which may include a period of mandatory supervision under Penal Code section 1170(h)(5)(B);

3. Add item 2c to note imposition of a split sentence under Penal Code section 1170(h)(5)(B);
4. Add check boxes to item 2f to reflect imposition of court operations assessments, court facilities assessments, and base fines plus any penalties, assessments, and surcharges;
5. Add advisements to item 3b regarding parole and postrelease community supervision tolling and revocation consequences, including the maximum custody time for each violation;
6. Include mandatory and postrelease community supervisions to the advisement in item 3c regarding the impact of a conviction on any other cases;
7. Clarify that item 3f(2) applies only upon conviction of a violent felony;
8. Revise item 3g to clarify that county jail terms under Penal Code section 1170(h) qualify as prison priors; and
9. Revise several other items to enhance and update the information and advisements contained in the form.

The text of the proposed amendments to the form is attached at pages 5–11.

Previous Council Action

Plea Form, With Explanations and Waiver of Rights—Felony (CR-101) is an optional form that was originally adopted by the Judicial Council effective January 1, 2007. Unrelated revisions were later approved effective July 1, 2008, and January 1, 2010.

Rationale for Recommendation

Form CR-101 is designed to assist courts in making complete records of guilty pleas by including all necessary waivers, the direct consequences of a plea, and the most common advisements and warnings.

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

This proposal is designed to update the form in response to the recent changes to the sentencing laws, including advisements and information about parole, postrelease community supervision

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

under Penal Code section 3455, and split sentences and mandatory supervision under Penal Code section 1170(h)(5)(B).

Comments, Alternatives Considered, and Policy Implications

The proposal was circulated for public comment during the spring 2012 cycle. A total of nine comments were received. Of those, one agreed with the proposed changes, four agreed if modified, and four did not specify a position. A chart with all comments received and committee responses is attached at pages 12–29.

Notable comments and committee responses

The committee modified the proposal in response to the following notable concerns:

- ***Fines, fees, and assessments.*** To enhance the sentencing information on the form, the committee added check boxes to item 2f to reflect imposition of court operations assessments, court facilities assessments, and base fines plus any penalties, assessments, or surcharges.
- ***Consequences of revocations of parole and postrelease community supervision.*** To enhance the information regarding the consequences of revocations of parole and postrelease community supervision, the committee (a) added an advisement to item 3b(2) to clarify that courts are authorized to toll the period of supervision, (b) switched the order of items 3b(2) and 3b(3) so that the new advisement about tolling immediately follows the advisement regarding the length of the supervision period, and (c) revised item 3b(3) to clarify the maximum period of each category of supervision.
- ***Prison priors.*** To clarify that county jail commitments under Penal Code section 1170(h)(5)(B) may increase the penalties for any future custodial sentences, the committee replaced the phrase “prison term” in item 3g with the word “incarceration” and changed the title to “Prior Prison Term or County Jail Sentence Under Penal Code Section 1170(h)(5).”

Additional changes

In response to comments, the committee also approved other minor noncontroversial revisions designed to enhance and update the information on the form, including adding to item 6a an acknowledgement by the defendant of the potential immigration consequences and clarifying that the custody credit limitations described in item 3f(2) apply only if the defendant is convicted of a violent felony.

Notable alternatives considered

The committee also considered but declined the following notable alternatives proposed by commentators and the Judicial Council’s Rules and Projects Committee:

- ***Loss of public benefits.*** The committee declined to amend the form to include an advisement regarding the defendant’s potential loss of public benefits resulting from a conviction. The

committee believes that it would be impractical for the form to include every conceivable collateral consequence of a guilty plea. As noted above, the form is designed to include only the direct consequences and most common advisements.

- **Format.** The committee also considered but declined several suggestions to reorder various items on the form in favor of retaining the current format, which is designed to mirror the flow of a typical plea proceeding.

Implementation Requirements, Costs, and Operational Impacts

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

Attachments

1. Form CR-101, at pages 5–11
2. Chart of comments, at pages 12–29
3. Attachment A: Felony and Misdemeanor Plea Forms From the Superior Court of Riverside County

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

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

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

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

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

- a. Check one: **State Prison** (or the Division of Juvenile Justice) **County Jail** for
- INITIALS
- (1) _____ years and _____ months or
- (2) not less than _____ years and _____ months and/or not more than _____ years and _____ months.
- (3) Other: (*specify*):
- b. **Probation** for _____ years under conditions to be set by the court, including:
- _____ days in the **county jail** or
- up to _____ days in the **county jail**.

I understand that a violation of any of the conditions of probation, including failure to complete a drug education or treatment program, if ordered by the court, may cause the court to send me to **county jail or state prison** for up to the "**Aggregate Maximum Time of Imprisonment**" specified in item 1, which may include a period of mandatory supervision under Penal Code section 1170(h)(5)(B) if the court sends me to county jail.

- c. **Split Sentence (1170(h)(5)(B)):** _____ years and _____ days in the county jail and _____ years and _____ days on mandatory supervision under conditions set by the court.

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INITIALS

2. d. **Narcotics Addiction Confinement**

I understand that if the court finds that I am addicted to narcotics or in immediate danger of becoming a narcotics addict, the court may send me to a narcotics detention, treatment, and rehabilitation facility for up to the amount of time I would otherwise have served in prison.

e. **Open Plea**

- 1. I understand the maximum and minimum sentences for the charges and allegations stated on page 1. No one has made any other promises to me about what sentence the court may order.
- 2. I understand that I am not eligible for probation.
- 3. I understand that I will not be granted probation unless the court finds at the time of sentencing that this is an unusual case where the interests of justice would be best served by granting probation.

f. **Restitution, Statutory Fees, and Assessments**

I understand that the court will order me to pay the following amounts (if an amount is not yet known, "TBD" for "to be determined" is entered next to the \$); I must prepare financial disclosure statements to assist the court in determining my ability to pay; and refusal or failure to prepare the required financial disclosure statements may be used against me at sentencing:

- 1. \$ _____ to the Victim Restitution Fund
- 2. \$ _____ restitution to actual victims
- 3. \$ _____ restitution to the State of California, Victims of Crime Fund
- 4. \$ _____ court operations assessment
- 5. \$ _____ court facilities assessment
- 6. \$ _____ base fine plus any applicable penalties, assessments, and surcharges
- 7. \$ _____ other (specify): _____
- 8. \$ _____ other (specify): _____
- 9. An (additional) amount to be determined by the court at sentencing or such other hearing as the court may set.

g. **Parole Revocation or Probation Revocation Fine**

I understand that if I am sentenced to state prison, the court will impose a parole revocation fine, which will be collected only if my parole is later revoked. I also understand that if I am granted probation, the court will impose a probation revocation fine, which will be collected only if my probation is later revoked.

h. **Dismissal of Other Counts**

I understand that as part of the plea agreement bargain, the following counts will be dismissed after sentencing:

I understand and agree that the sentencing judge may consider facts underlying dismissed counts to determine restitution and to sentence me on the counts to which I am entering a plea.

i. **Other Terms (specify):**

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3. CONSEQUENCES OF MY PLEA

INITIALS

a. No Contest ("Nolo Contendere") Plea

I understand that a no contest plea is the same as pleading guilty and that if I plead no contest I will be convicted and my no contest plea could be used against me in a civil case.

b. Parole and Postrelease Community Supervision

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

(1) I will be placed on parole or postrelease community supervision for up to _____ years after my release.

(2) If I abscond or the court tolls my supervision, the total time of parole or postrelease community supervision can be extended.

(3) If I violate any of the terms or conditions of my parole, I can be sentenced to county jail for up to 180 days for each violation, or returned to state prison for up to one year, up to a maximum of _____ years. If I violate any of the terms or conditions of postrelease community supervision, I can be sentenced to county jail for up to 180 days for each violation, for up to a maximum of 3 years.

c. Effect of Conviction on Other Cases

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

d. Registration

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

- (1) an arson offender
- (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 if I am convicted of a violent felony, 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 or County Jail Sentence Under Penal Code Section 1170(h)(5)

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

h. Driver's License and Vehicle Forfeiture

I understand that my privilege to drive a motor vehicle may be revoked or suspended by the court or the California Department of Motor Vehicles and my vehicle may be ordered forfeited if it was involved in the offense.

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3. i. Immigration Consequences

INITIALS

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

j. Firearms

I understand that federal and state laws prohibit a convicted felon from possessing firearms or ammunition 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, including the immigration consequences; and
- (6) Anything else I think is important to my case.

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INITIALS

6. b. Questions

I have no further questions of the court or of my attorney with regard to my plea and admissions in this case, any of the rights, or anything else on this form.

c. Stipulation to Commissioner

I understand that I have the right to have a judge take my plea and sentence me. I give up this right and agree to have a commissioner, sitting as a temporary judge, take my plea and sentence me.

d. Medications or Controlled Substances

I am not taking any medication that affects my ability to understand this form and the consequences of my plea, have not recently consumed any alcohol or drugs, and am not suffering from any medical condition, except for the following: _____

e. Discovery of New Facts

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

7. STATUTORY RIGHT TO A PRELIMINARY HEARING

I understand that before I have a trial, the law gives me the right to a speedy preliminary hearing at which the prosecution would produce evidence and the court must find reasonable cause to believe I committed the crimes with which I have been charged. I understand that I have all of the above constitutional rights at the preliminary hearing, except for the right to a jury trial.

I give up my right to a preliminary hearing and the constitutional rights listed in item 5 (on page 4).

8. WAIVER OF CONSTITUTIONAL RIGHTS

I give up, for each of the charges and allegations listed in item 1 (on page 1) my right to a jury trial, my right to a court trial, my right to confront and cross-examine witnesses, my right to remain silent and not to incriminate myself, and my right to produce evidence and to present a defense, including my right to testify on my own behalf. I understand that I am, in fact, incriminating myself with my plea.

9. THE PLEA

I freely and voluntarily plead GUILTY NO CONTEST to the charges listed in item 1 (on page 1) and admit the allegations listed in item 1 (on page 1), understanding that this plea and admission will lead to the penalties listed in item 2 (on pages 1 and 2).

a. I offer my plea of guilty or no contest freely and voluntarily and with full understanding of everything in this form. No one has made any threats; used any force against me, my family, or my loved ones; or made any promises to me, except as listed in this form, in order to convince me to plead guilty or no contest.

b. I understand that the court is required to find a factual basis for my plea to make sure that I am entering a plea to the proper offenses under the facts of the case.

I offer to the court the following as the basis for my plea of guilty or no contest and any admissions:

(1) I understand that the court may consider the following as proof of the factual basis for my plea:

- (a) Preliminary hearing transcript
- (b) Police report
- (c) Probation report
- (d) Welfare investigator's declaration
- (e) Court documents regarding any alleged prior offenses
- (f) Other (specify): _____
- (g) (Specify facts): _____

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9. b. (2) I am pleading guilty or no contest to take advantage of a plea agreement (my attorney will stipulate to a factual basis for the plea). (*People v. West* (1970) 3 Cal.3d 595.)

INITIALS

10. AFTER THE PLEA

a. Surrender

I understand that the court is allowing me to surrender at a later date to begin serving time in custody.

I agree that if I fail to appear on the date set for surrender or sentencing without a legal excuse, my plea will become an "open plea" to the court, I will not be allowed to withdraw my plea, and I may be sentenced up to the maximum allowed by law.

b. Sentencing Court

I understand that I have the right to be sentenced by the same judge or commissioner who takes my plea. I give up that right and agree that any judge or commissioner may sentence me.

c. Sentencing Date

I understand that I have the right to be sentenced within 20 court days. I give up that right and agree to be sentenced at a later date.

11. MANDATORY WARNING

I understand that if I am charged with violating Vehicle Code section 23103, as specified in Vehicle Code section 23103.5, or Vehicle Code sections 23152 or 23153, the following warning applies:

You are hereby advised that being under the influence of alcohol or drugs, or both, impairs your ability to safely operate a motor vehicle. Therefore, it is extremely dangerous to human life to drive while under the influence of alcohol or drugs, or both. If you continue to drive while under the influence of alcohol or drugs, or both, and as a result of that driving someone is killed, you can be charged with murder.

DEFENDANT'S STATEMENT

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

DEFENDANT'S SIGNATURE

DATE

ATTORNEY'S STATEMENT

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

I concur in the plea and admissions and join in the waiver of the defendant's constitutional and statutory rights, and I hereby stipulate that there is a factual basis for the plea and refer the court to the police report preliminary hearing transcript probation report other (*specify*): _____ (*People v. West* (1970) 3 Cal.3d 595.)

ATTORNEY'S SIGNATURE

DATE

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INTERPRETER'S STATEMENT

I, having been duly sworn or having a written oath on file, certify that I truly translated this form to the defendant in the language noted below. The defendant stated that he or she understood the contents on the form and then initialed and signed the form.

Language: Spanish Other (specify): _____

INTERPRETER'S SIGNATURE

DATE

INTERPRETER'S NAME (TYPE OR PRINT)

DISTRICT ATTORNEY'S STATEMENT

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

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

ATTORNEY'S SIGNATURE

DATE

COURT'S FINDINGS AND ORDER

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

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

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

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

JUDGE'S SIGNATURE

DATE

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Criminal Justice Realignment: Felony Waiver and Plea Form (revise form CR-101)

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

	Commentator	Position	Comment	Committee Response
1.	Kenneth Carver Senior Research Attorney Superior Court of Fresno County	NI	<p>Not really a comment on the proposed changes, but a comment on the existing firearms prohibition advisement:</p> <p>Item 3j—the firearms possession prohibition advisement should also include the ammunition prohibition advisement - as a felon is also prohibited from possessing ammunition. (Pen. Code, § 30305—punishable by imprisonment in the state prison, not under subdivision (h) of Section 1170.)</p>	<p>Under Penal Code section 30305, which was added by the Legislature in 2010 and became operative on January 1, 2012, convicted felons are prohibited from possessing ammunition. Thus, the committee agrees to revise item 3j as follows:</p> <p>“I understand that federal and state laws prohibit a convicted felon from possessing firearms <u>or ammunition</u> for life.”</p>
2.	Hon. Michael M. Dest (Ret.) Superior Court of San Bernardino County	NI	<p>I would like to comment on your Proposed Judicial Council Form CR-101 (Rev 1/1/13). Although I find it quite noble that there is an attempt to make such a form, the reality is that this form will seldom, if ever, be used for actual pleas for the following reasons:</p> <ol style="list-style-type: none"> 1. It is not an NCR Form. Copies of pleas need to be given to the Defendant, their attorney, the Prosecutor and the original to the court, not to mention Probation. The concept that a Judicial Council Form can be filled out on the computer and e-mailed to all parties misses the reality that inputting information to a computer may not reflect what was actually initialed, handwritten or stricken on the 	

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Criminal Justice Realignment: Felony Waiver and Plea Form (revise form CR-101)

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

	Commentator	Position	Comment	Committee Response
			<p>original form.</p> <p>2. Seven (7) pages. Too many pages.</p> <p>3. Too many fill in the box, and box options and blanks. An ideal form has as few boxes and blanks to fill out. The more options, the more chances that some are erroneously filled or not filled out which eventually translates to motions to set aside or vacate or withdraw the plea.</p> <p>That being said, I would like to make comments as to the proposed form.</p> <ul style="list-style-type: none"> • Page 1, [item] 1. I think it is misleading to only state the minimum and maximum range. A Defendant or the public may think that the Court can give any range in-between the two stated amounts. The entire [triad] should be listed. For example, a Domestic Violence with a charged prior [domestic violence conviction] is a 2, 4, [or] 5-year range. The middle term is critical in calculating a consecutive sentence where the term is 1/3 of the middle term. • The form provided does not have enough space to put in the code section and the description of the crime. Sometimes the description of the crime is critical for future enhancements. For 	<ul style="list-style-type: none"> • The committee declines the suggestion as unnecessary. The committee believes that advisements regarding the minimum and maximum possible sentences are sufficient to ensure a fully informed plea. • The committee declines the suggestions as unnecessary. The committee believes that item 1 provides sufficient space to note the description of each count. The committee also prefers the form's current format, which mirrors the flow of a

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	Commentator	Position	Comment	Committee Response																								
			<p>example, [under Vehicle Code section] 10851a (Unlawful taking or driving a motor vehicle)[,] the unlawful <i>driving</i> [of] a motor vehicle is not a prior-able ([Pen. Code, §] 666.5) offense, but unlawful <i>taking (which is a theft)</i> is. Furthermore, the front of the form should have the major terms of the plea which should include any [violation of probation] (whether concurrent or consecutive term). Thus [page] 2, [item] i. should be on page 1. I would recommend the following format: “I desire to change my plea(s) and plead guilty/no contest to and admit the following admissions, allegations and/or enhancement(s) or prior(s) including lesser offense(s) to which plea to be made and the maximum sentence:</p> <table border="1" data-bbox="804 954 1381 1258"> <thead> <tr> <th><i>Count(s)</i></th> <th><i>Code Section</i></th> <th><i>Name of Offense/Enhancement/Prior</i></th> <th><i>Sentencing Range</i></th> </tr> </thead> <tbody> <tr> <td><i>Count(s)</i></td> <td><i>Code Section</i></td> <td><i>Name of Offense/Enhancement/Prior</i></td> <td><i>Sentencing Range</i></td> </tr> <tr> <td><i>Count(s)</i></td> <td><i>Code Section</i></td> <td><i>Name of Offense/Enhancement/Prior</i></td> <td><i>Sentencing Range</i></td> </tr> <tr> <td><i>Count(s)</i></td> <td><i>Code Section</i></td> <td><i>Name of Offense/Enhancement/Prior</i></td> <td><i>Sentencing Range</i></td> </tr> <tr> <td><i>Count(s)</i></td> <td><i>Code Section</i></td> <td><i>Name of Offense/Enhancement/Prior</i></td> <td><i>Sentencing Range</i></td> </tr> <tr> <td><i>Count(s)</i></td> <td><i>Code Section</i></td> <td><i>Name of Offense/Enhancement/Prior</i></td> <td><i>Sentencing Range</i></td> </tr> </tbody> </table> <p>I am freely and voluntarily entering the plea(s) of guilty/no contest [and admission(s)] as indicated:</p>	<i>Count(s)</i>	<i>Code Section</i>	<i>Name of Offense/Enhancement/Prior</i>	<i>Sentencing Range</i>	<i>Count(s)</i>	<i>Code Section</i>	<i>Name of Offense/Enhancement/Prior</i>	<i>Sentencing Range</i>	<i>Count(s)</i>	<i>Code Section</i>	<i>Name of Offense/Enhancement/Prior</i>	<i>Sentencing Range</i>	<i>Count(s)</i>	<i>Code Section</i>	<i>Name of Offense/Enhancement/Prior</i>	<i>Sentencing Range</i>	<i>Count(s)</i>	<i>Code Section</i>	<i>Name of Offense/Enhancement/Prior</i>	<i>Sentencing Range</i>	<i>Count(s)</i>	<i>Code Section</i>	<i>Name of Offense/Enhancement/Prior</i>	<i>Sentencing Range</i>	<p>typical plea proceeding.</p>
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	Commentator	Position	Comment	Committee Response
			<p><input type="checkbox"/> Because I am guilty (and for no other reason), and/or <input type="checkbox"/> Because as a result of plea bargaining after discussing with my attorney the possibility of my being convicted on other more serious charges and/or risking the possibility of a longer sentence (P v West), and/or</p> <p>Because the <input type="checkbox"/> District Attorney <input type="checkbox"/> Court has agreed to:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____”</p> <ul style="list-style-type: none"> • I think it is important to indicate whether new [Penal Code section] 4019 or old [section] 4019 credits apply so that it is known at the time of the plea (and can be corrected or addressed) rather than later. • The split sentence should include the “months” option. Let’s face it, a 16 months sentence is not going to be termed a 1 year 120 day sentence or 485 day sentence as indicated in [page 1, item] 2c. • Page 2 [item f1] is a misstatement of the law. I would recommend the following: “I understand that in addition to any 	<ul style="list-style-type: none"> • The committee declines the suggestion as unnecessary because custody credits are separately noted on the record and in the abstract of judgment. • The committee declines the suggestion because requiring the years and days of the sentence ensures accuracy. • Because minimum fine and fee amounts are frequently changed, the committee agrees to delete prefilled references to specific amounts. To enhance the

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			<p>other punishment, I shall be required to pay a mandatory restitution fine of not less than \$240 in 2012, \$280 in 2013, and \$300 in 2014 nor greater than \$10,000 and subject to a penal fine up to \$10,000 (\$20,000 for Health and Safety Code §§ 11350-11353, 11359-11361 or \$50,000 for [Health and Safety Code] § 11379.6 or Arson, Penal Code § 451-455) PLUS penalty assessments whether probation is granted or denied plus any other mandatory or discretionary fees, fines and costs that may be ordered.” It is too much fill-in-the blanks or TBA in the boxes.</p> <ul style="list-style-type: none"> Page 2 [item] h: [W]hy have a fill-in-the-blank line? A mere statement that “as part of the plea agreement bargain, the balance of the complaint, information or indictment against me will be dismissed.” The next line is a lame attempt at a Harvey Waiver. Why not go all out like the following: “<i>(Harvey Waiver)</i> I waive my rights regarding dismissed counts and/or allegation(s) and any charges the district attorney agrees not to file to the extent that the Court may consider these factors in deciding whether or not to grant probation and in deciding whether or not to impose a midterm, aggravated or mitigated prison term, county or state prison placement, the appropriate 	<p>information on the form, the committee also agrees to (a) add the mandatory court facilities assessment under Government Code section 70373, and (b) replace the phrase “court security fees” with “court operations assessment,” as recently modified by Penal Code section 1465.8. Any other applicable fines or fees may be added in the “other” section of item 2f.</p> <ul style="list-style-type: none"> The committee declines the suggestion because the committee prefers a formal acknowledgement of the dismissed counts. In addition, the committee declines the suggestion regarding the <i>Harvey</i> waiver as unnecessary because the committee believes that the form’s current <i>Harvey</i> waiver is sufficient.

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			<p>presentence credits, and as to restitution.”</p> <ul style="list-style-type: none"> • Page 3 [item] 3b is a disaster in the making. The blanks will be either ignored or wrongly filled out • Page 3 [item f4]: I would delete the fill-in-the-blank. I can see [ineffective assistance of counsel] appeals in filling or not filling [in] hat blank. • Page 5 [item 9b] should have also included a box for the complaint or information or indictment because the charging documents usually sets up the jurisdiction, dates and victims as well as the case numbers for the priors and elements of the crime. • Page 6 [item 9b]. Eliminate. [<i>People v. West</i>] stands for the proposition that the Defendant is pleading to avoid more severe consequence if convicted by a jury. You still need a factual basis or the plea can be set aside in the future. [A <i>West</i>] plea should be included [on] page 1 (I’ve include that language on page 1). • Page 6 [item] 10a. The most ridiculous line “If the box to the right is initialed”. There is not a defense attorney alive who won’t “X” out the 	<ul style="list-style-type: none"> • The committee agrees to clarify item 3b as noted in the committee response to comment #3 below. • The committee declines the suggestion because filling in the applicable count helps ensure accuracy. • The committee declines the suggestion as unnecessary because item 9b(1) includes an “other” checkbox. • The committee declines the suggestion as unnecessary. The committee prefers the form’s current format, including reference to <i>People v. West</i> in item 9b(2). • The committee agrees to delete the phrase as suggested. Please see the committee’s response to the related suggestion in comment #5 below.

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			<p>box. Eliminate the highlighted portion.</p> <ul style="list-style-type: none"> • Page 6 [item] 10c. What about an “immediate sentence”? A Defendant has a right to a delay in sentencing. I would recommend adding the following: “or waive any delay in sentencing and request immediate sentence and waiver of any referral to probation. “ • Page 6 –Attorney statement, I would eliminate everything after “...factual basis for the plea”. <p>There are other comments I have but these are the most important. I have drafted the Felony plea form in San Bernardino County along with our Misdemeanor plea forms, Misdemeanor Tahl waivers, Probation and post release community supervision terms and conditions, and many others that we currently use. I have also helped draft Judicial Council forms that are still in use. My experience is that a form will go through over a dozen revisions.</p> <p>As a practical matter, my assignment is an Early Disposition Calendar on felonies. I take a huge portion of our felony pleas, and I can assure you that the more boxes, check marks or fill-in-the-blanks, the more errors are made. And these errors may not be caught by the DA, clerk nor the judge until subsequent motions are made.</p> <p>Thank you for considering my remarks ...</p>	<ul style="list-style-type: none"> • The committee declines the suggestion as unnecessary and because courts must still refer the matter to the probation department for a report. (See, e.g., Pen. Code, §§ 1203(b)(4); 1203c.) • The committee declines the suggestion as unnecessary.

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3.	First District Appellate Project Mr. Mat Zwerling Executive Director	NI	<p>We suggest that two of the proposed revisions to the felony plea waiver form should be modified.</p> <p>Under Penal Code section 3455, subdivision (d) a person shall not remain under or in custody pursuant to post-release community supervision for a period longer than three years, unless the person absconds from postrelease community supervision. The possibility of extension due to absconding is addressed by line 3.b.(3) of the current proposed revisions.</p> <p>Revised line 3.b.(2) states:</p> <p>(2) If I violate any of the terms or conditions of my parole or postrelease community supervision, I can be returned to state prison for up to one year or county jail for up to 180 days for each violation, up to a maximum of ___ years.</p> <p>Since the maximum term of postrelease community supervision of three years is specified by statute, if a defendant is subject to postrelease community supervision, rather than parole, there is no need to require the person completing CR-101 to fill in a specified maximum term of custody. To provide more clarity to persons completing the form, we suggest that line 3.b.(2) be amended to state:</p> <p>(2) If I violate any of the terms or conditions of my parole or postrelease community supervision, I can be returned to state prison</p>	<ul style="list-style-type: none"> To better distinguish between the consequences of revocations of parole and postrelease community supervision, including the maximum period of supervision, the committee agrees to separate the explanation of the consequences of each type of supervision in item 3b(2) as follows: <p>“If I violate any of the terms or conditions of my parole, I can be sentenced to county jail for up to 180 days for each violation, or returned to state prison for up to one year, up to a maximum of _____ years. If I violate any of the terms or conditions of postrelease community supervision, I can be sentenced to county jail for up to 180 days for each violation, for up to a maximum of 3 years.”</p>

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			<p>for up to one year, up to a maximum of ___ years, or to county jail for up to 180 days for each violation, up to a maximum of three years.</p> <p>Regarding the revision to line 3.g., we believe it is important to make clear that the enhancement in Penal Code section 667.5, subdivision (b) no longer strictly constitutes a “prior prison term” enhancement, since it is equally applicable to felony county jail sentences imposed under Penal Code section 1170, subdivision (h). The language of the proposed revision, including the header, to some extent still indicates that only a “prior prison term” qualifies for enhancement. We suggest that line 3.g. be amended so that the headline reads “Prior Prison Term or Prior Penal Code section 1170, subdivision (h) County Jail Sentence” and so, in the body of the advisement, “prior prison term” is deleted in favor of “incarceration.” Accordingly, we suggest the following revised language (advisory committee’s recommendation highlighted; our recommendation boldface):</p> <p style="padding-left: 40px;">g. Prior Prison Term or Prior Penal Code section 1170(h) County Jail Sentence. I understand that if I am sentenced to prison or county jail under Penal Code section 1170(h), the penalty for any future felony conviction may be increased as a result of my incarceration in this case.</p>	<ul style="list-style-type: none"> To clarify the impact of prior felony convictions on future custodial sentences, the committee agrees to change the title of item 3g. from “Prior Prison Term” to “Prior Prison Term or County Jail Sentence Under Penal Code Section 1170(h)(5).” In addition, the committee agrees to the following revision: “... the penalty for any future felony conviction may be increased as a result of my prison term incarceration in this case.”

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4.	Hon. Helios Hernandez Superior Court of Riverside County	NI	<p>There is nothing incorrect about the proposed 7 page plea form. It is just too long. In busy courts, with 100 cases per day and dozens of pleas per day, the attorneys do not have the time to go over such a long form. If this form is approved it is imperative that you do not make it mandatory. A two page, one piece of paper form is just fine. Please see the attached ... two page form.</p> <p>This proposed form takes into account Realignment cases. This form is seven pages long. It tries to be thorough. No matter how thorough you try to be, you will never cover everything. And, the law is that collateral consequences do not have to be specifically waived. Please withdrawals are rarely based on the plea form. They are based on other claims, such as “My attorney did not explain this to me.” “My attorney pressured me into pleading.” “The prosecutor threatened to put my wife in jail if I did not plead.” “I was not mentally present on the day in question.” The proposed form takes too long to complete. When you have a calendar of over 100 cases every day and dozens of pleas, minutes count for the court and the attorneys. In Riverside, we have used a two page (one piece of paper) form for many years. After thousands and thousands of uses, it has never been the cause of a reversal or a withdrawal of a plea. A copy of Riverside’s felony plea form is attached. The felony plea form is yellow. The similar misdemeanor form is pink. [Both forms attached as Exhibit A].</p>	<p>The form is an <i>optional</i> form, originally approved by the Judicial Council effective January 1, 2007. The form is designed to assist courts in making complete records of guilty pleas by including all necessary waivers, the direct consequences of a plea, and the most common advisements and warnings. The existence of this form does not prevent courts from promoting use of locally developed plea forms.</p>

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5.	Hon. Paul M. Marigonda Superior Court of Santa Cruz County	AM	<p>In Section 10.a.:</p> <p>I recommend that the second sentence be modified to read: “If the box to the right is initialed, I agree that if I fail to appear on the date set for surrender or sentencing without a legal excuse, or if I commit a new criminal offense before the surrender or sentencing date, 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.”</p> <p>This proposed amendment will bring this provision in Section 10.a in accordance with the general principles of <i>People v. Cruz</i> (1988) 44 Cal.3d 1247.</p>	<p>To clarify the waiver of the right to withdraw a plea for failure to appear, the committee agrees revise item 10a as follows:</p> <p>“If the box to the right is initialed, I agree that if I fail to appear on the date set for surrender <u>or sentencing</u> 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.”</p> <p>The committee, however, declines the suggestion to include the consequences of the commission of a new crime to avoid confusion about what constitutes a “crime” and its “commission.”</p>
6.	Orange County Bar Association Ms. Dimetria Jackson President	AM	<ul style="list-style-type: none"> Because Realignment creates many different supervision groups based on a variety of factors, including date of conviction and date of release, much confusion has been generated as to which type of supervision an individual will be released on. For this reason, there is a need for the forms to be specific so that the individual being sentenced understands which form of supervision they are subject to, and which future sentence they are vulnerable to if they violate. Hence, on page 3, under ‘Consequences of My Plea’, Number 3, subsection (b), the plea form would be more clear and understandable if divided into two 	<ul style="list-style-type: none"> Please see the committee response to the related suggestion to Comment #3 above.

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			<p>separate paragraphs: “(a) If I violate any of the terms or conditions of my parole, I can be returned to [state prison][county jail] for up to [one year][180 days] for each violation; (b) If I violate any of the terms or conditions of my postrelease community supervision, I can be returned to county jail for up to 180 days.</p> <ul style="list-style-type: none"> • Additionally, there is an ambiguity in the statutory language that leaves open the question whether the 180 day maximum for violational conduct is per violation or an aggregate amount. Because this section has not yet been resolved in the courts, the language “for each violation” may not be legally accurate. • [Item] 3b(3) modifies the language in 3b(1) and should be moved under that section as a subsection to be more clear. 	<ul style="list-style-type: none"> • The committee declines the suggestion because Penal Code section 3455(d) was recently amended to clarify that the court may impose 180 days in jail for “each custodial sanction.” • The committee agrees to switch the order of items 3b(3) and 3b(2) as suggested. In addition, to clarify that courts may also toll supervision under Penal Code section 1203.2, the committee agrees to revise item 3b(3) as follows: <p>“If I abscond from <u>or the court tolls my</u> supervision, this can extend the total time of my parole or postrelease community supervision can be extended.”</p>

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			<ul style="list-style-type: none"> • Finally, consistent with the law, a subsection should be added under 3(b) which states the statutory provision for termination of post release community supervision: “If I have been on postrelease community supervision continuously for six months with no sanctions or violations resulting in incarceration, I may be discharged from postrelease community supervision. If I have been on postrelease community supervision continuously for one year with no sanctions or violations resulting in incarceration, I must be discharged from that supervision at the conclusion of the year.” <p>For clarification, the proposed section of the plea form would then read as follows:</p> <p>3. CONSEQUENCES OF MY PLEA</p> <p>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.</p> <p>b. Parole and Postrelease Community Supervision I understand that if I am sentenced to state prison or a narcotics treatment facility</p> <p>(1) I will be placed on parole or postrelease</p>	<ul style="list-style-type: none"> • The committee declines to add discharge information as unnecessary.

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			<p>community supervision for up to _____ years after my release. If I abscond from supervision, this can extend the total time of parole or postrelease community supervision. [Copied from what is listed as (3) in the original proposed language.]</p> <p>(2) If I violate any of the terms or conditions of my parole or postrelease community supervision, I can be returned</p> <p>(2)(a) If I violate any of the terms or conditions of my parole, I can be returned to [state prison][county jail] for up to [one year][180 days] for each violation;</p> <p>b) If I violate any of the terms or conditions of my postrelease community supervision, I can be returned to county jail for up to 180 days. to state prison for up to one year or county jail for up to 180 days for each violation, up to a maximum of ____ years.</p> <p>(3) If I abscond from supervision, this can extend the total time of parole or postrelease community supervision. [Moved up to 3(b)(1)(a)]</p> <p>(3) If I have been on postrelease community supervision continuously for six months with no sanctions or violations resulting in incarceration, I may be discharged from postrelease community supervision. If I have been on postrelease community supervision continuously</p>	

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			<p>for one year with no sanctions or violations resulting in incarceration, I must be discharged from that supervision at the conclusion of the year.</p>	
7.	<p>Orange County Public Defender Mr. Mark S. Brown Assistant Public Defender</p>	AM	<p>In general, the Orange County Public Defender supports the Committee’s proposed changes to the <i>Plea Form, With Explanations and Waiver of Rights-Felony</i> (form CR-101). However, the modifications discussed below should be made to the Committee’s proposed changes.</p> <p>Current Item 3(b)(2) (Parole and Postrelease Community Supervision). This paragraph will be less confusing if split into two paragraphs:</p> <p>(2) If I violate any of the terms or conditions of my parole, I can be returned to [state prison] [county jail] for up to [one year] [180 days] for each violation.</p> <p>[Note (1): Effective July 1, 2013, PC</p>	<ul style="list-style-type: none"> • Please see the committee responses to related suggestions in comments #3 and #6 above.

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			<p>3000.08(f)(1) and (2) provide that parole violations will be served in county jail.]</p> <p>[Note (2): Effective July 1, 2013, PC 3000.08(g) provides that the maximum parole violation shall not exceed 180 days.]</p> <p>(3) If I violate any of the terms or conditions of my postrelease community supervision, I can be returned to county jail for up to 180 days for each violation.</p> <p>[Note (3): The 180-day sentence is a ceiling (<i>i.e.</i>, cannot be repeatedly imposed).]</p> <p>Current Item 3b(3) (Parole and Postrelease Community Supervision). This paragraph modifies, and should be moved to the end of, paragraph 3b(1).</p> <p>Proposed New Item 3b(4) (Parole and Postrelease Community Supervision). To properly advise the client, and foster positive performance on PCS, the following advisement should be added:</p> <p>(4) If I have been on postrelease community supervision continuously for six months with no violations, I may be discharged from postrelease community supervision. If I have been on postrelease community supervision continuously for one year with no violations, I must be discharged from postrelease community supervision.</p>	<ul style="list-style-type: none"> The committee declines to add discharge information as unnecessary.

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			<p>Proposed New Item 3c (Mandatory Supervision). The form currently does not explain the consequences of a violation of Mandatory Supervision; therefore, the following advisement should be added:</p> <p>c. Mandatory Supervision</p> <p>If I violate any of the terms or conditions of my mandatory supervision, I can be returned to county jail for the remaining term of my mandatory supervision.</p> <p>Current Item 3d(1) (Arson Registration). Although comments were not solicited for this item, the parenthetical remark: “(this registration is a lifelong requirement)” should also be added for an arson offender.</p>	<ul style="list-style-type: none"> • The committee declines this suggestion as unnecessary because the effect of the conviction on other cases, including cases in which mandatory supervision has been granted, is already addressed in item 3c. • The committee declines the suggestion because, e.g., unlike lifetime sex offender registration, arson defendants may be relieved of registration requirements upon dismissal under Penal Code section 1203.4. (Pen. Code, § 457.1(I).)
8.	Superior Court of Los Angeles County	AM	<p>General comment: The form tries to do too much and there should be two separate forms: one for state prison cases and one for county jail under realignment cases.</p> <p>Other comments:</p> <p>Paragraph 2f(1): The minimum restitution fine is \$240.00, not \$200.00, and it will [increase] over the next few years. Just cite to the statute.</p> <p>Paragraph 6a(5): Reword to read: “The immigration and other consequences of this plea; and”</p>	<ul style="list-style-type: none"> • The committee declines to create separate forms. The changes to felony sentencing laws brought about by realignment are adequately reflected in the proposed revisions. • Please see the committee response to the related suggestion in Comment #3 above. • To emphasize the defendant’s acknowledgement of the potential immigration consequences of a plea, the

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			Attorney's Statement: In the fourth sentence, add the words "immigration and other" before the word "consequences."	committee agrees to add the phrase "including immigration consequences" to item 6a(5). The committee declines, however, to amend the attorney's statement as unnecessary.
9.	Superior Court of San Diego County Mr. Michael M. Roddy Court Executive Officer	A	No additional comments.	No response required.