

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF INYO

Plaintiff: PEOPLE OF THE STATE OF CALIFORNIA

Defendant: _____

Case No. _____

**DOMESTIC VIOLENCE ADVISEMENT OF RIGHTS,
WAIVER, AND MISDEMEANOR PLEA FORM**

Fill out this form if you wish to plead guilty or no contest to the charges against you. Place your initials within the brackets for each applicable item only if you understand it, and sign and date the form on the last page. Some items, especially those brackets noted by an asterisk (*) may not be applicable in your case. "N/A" may be placed within any brackets for items that are not applicable. If you have any questions about your case, the rights you would be giving up by pleading guilty or no contest, the possible sentence, or the information on this form, ask your attorney.

1.a. **RIGHT TO AN ATTORNEY:** I understand that I have the right to be represented by an attorney throughout the proceedings. I have the right to hire or retain an attorney of my own choice. I understand that the Court will appoint a free attorney for me if I cannot afford to hire one, but at the end of the case, I may be ordered to pay all or part of the cost of that attorney, if I can afford to. If the Court orders me to reimburse the County of Inyo for all or a portion of the public defender services provided to me, that order will have the same force and effect of a civil judgment against me, and may be enforced in the same manner as any other civil judgment. []

1.b. I understand that there are dangers and disadvantages to giving up my right to an attorney, and that it is almost always unwise to represent myself. * []

NATURE OF THE CHARGES

2. I understand that I am charged with the following offense(s):
(check the appropriate box and/or write in the code section(s) below)

[] Penal Code Section 273.5(a) [] Penal Code Section 243(e)(1)

[] Penal Code Section 273.6 [] _____

_____ []

3. I understand that I am also charged with having the following **prior conviction(s)**:

_____ * []

4. I understand that I am also charged with violating the **probation order** in case(s):

_____ * []

5. I understand the charge(s) against me, and the possible pleas and defenses. []

CONSTITUTIONAL RIGHTS

6. **RIGHT TO A JURY TRIAL**-I understand that I have the right to a speedy and public jury trial. At the trial, I would be presumed innocent, and I could not be convicted unless all 12 impartial jurors were convinced that the District Attorney's Office had proven my guilt beyond a reasonable doubt. []

7. **RIGHT TO CONFRONT AND CROSS-EXAMINE WITNESSES**-I understand that I have the right to confront and cross-examine all witnesses testifying against me. I understand that I have the right to have them appear in Court and testify under oath in front of me, and that I or my attorney may ask them questions. []

8. **RIGHT AGAINST SELF-INCRIMINATION**-I understand that I have the right to remain silent and not incriminate myself. I also understand that I have the right to testify on my own behalf, but only if I want to. I understand that I can not be forced or compelled to testify, and that if I elect to remain silent, my silence will not be considered as any evidence of guilt. I understand that by pleading guilty or no contest, or admitting prior conviction(s) or probation violation(s), I am incriminating myself. I understand that if I am pleading no contest the Court will have no choice but to find me guilty of that charge(s). []

9. **RIGHT TO PRODUCE EVIDENCE**-I understand that I have the right to present evidence and to have the Court issue subpoenas (or orders) to bring into court all witnesses and evidence favorable to me, at no cost to me. []

10. **RIGHTS ON CHARGES OF PRIOR CONVICTION(S) AND PROBATION VIOLATION(S)**- If applicable-I understand that I have the right to an attorney, the right to a jury trial, the right to confront and cross-examine all witnesses, the right against self-incrimination, and the right to produce evidence for all the charges against me, including any charged prior conviction(s) or probation violation(s). However, for a charge of violating probation, I do not have the right to a jury trial, although I do have the right to a hearing before a judge. * []

WAIVER OF RIGHTS

Understanding all this, for all the charges against me, including any prior conviction(s) or probation violation(s):

- 11. I give up my right to an attorney and I choose to represent myself. * []
- 12. I give up my right to a jury trial. []
- 13. I give up my right to confront and cross-examine witnesses. []
- 14. I give up my right to remain silent and to not incriminate myself. []
- 15. I give up my right to produce evidence and witnesses on my own behalf. []

CONSEQUENCES OF PLEA OF GUILTY OR NO CONTEST

16. **PENALTY:** I understand that the possible consequences for each of the offense(s) charged include the following:

- One (1) year (364 days) in the Inyo County Jail for each misdemeanor
- [] Other: _____
- Mandatory minimum of 48 hours in jail if probation is granted and I have a previous conviction for Penal Code § 243(e). Minimum of 15 days in jail if I have a prior conviction of PC § 273.5 within seven years, and a 60-day minimum jail term if I have two or more prior convictions within seven years. Mandatory minimum of 30 days in jail for a violation of PC §§ 273.6(b) and 273.6(e), unless the Court reduces the minimum in the interests of justice as further provided by the statute.
- \$ 2,000 fine plus assessments for a conviction of PC § 243(e); \$6,000 fine plus assessments for a conviction of PC § 273.5(a), and up to \$10,000 if I have one or more prior convictions; \$1,000 fine plus assessments for a conviction of PC § 273.6(a), and a \$2,000 fine plus assessments for a conviction of PC §§ 273.6(b) or (e). I understand that the assessments will significantly increase the amount of the fine that I must pay.
- I understand that a \$40 Court Operations Assessment will be imposed for each count for which I am convicted. (PC § 1465.8(a)(1)) Also, a \$30 Criminal Conviction Assessment will be imposed for each felony and misdemeanor count for which I am convicted, and \$35 assessment for each infraction count for which I am convicted. (Govt. Code § 70373) The Court may also impose a \$10 citation fee (cite and release fee), or a \$25 Administrative Screening Fee (O.R. release fee) under PC § 1463.07.

- Payment of Victim Restitution: I understand that I will be required to pay for damage, injury, or loss, including medical expenses, cost of counseling, lost wages, and other economic losses and expenses incurred by the Victim(s). [PC § 1202.4] I understand that prior to my probation and sentencing hearing, I must provide the Probation Department and file with the Clerk of this Court a disclosure form (Judicial Council Form CR-115 which is available at the Clerk's Office) as required by Penal Code § 1202.4(f)(4&5), including, but not limited to, identifying all assets, income, and liabilities in which I held or controlled a present or future interest as of the date of my arrest for the crime for which restitution may be ordered. If I am granted probation or a conditional sentence, I understand that I must also file with the Court a new and updated financial disclosure form 120 days before the scheduled termination of my probation or conditional sentence, if I still owe money on a victim restitution order or restitution fine. [PC § 1202.4(f)(11)]

- Mandatory requirements of Penal Code § 1203.097 and other mandatory requirements: - If granted probation, I understand that the Court must also impose the following terms of probation which I must comply with:
 - Thirty-six (36) months as a minimum term of probation. (Formal probation is imposed, at least until I successfully complete the 52-week Batterer's Intervention Program mentioned below. However, unless specifically agreed otherwise, even if I successfully complete the 52-week certified Batterer's Intervention Program in a timely manner, formal probation may be imposed for the entire 36 month term.)
 - Issuance of a criminal protective order protecting the Victim from further acts of violence, threats, stalking, sexual abuse, and harassment, and if appropriate, the order will contain residence exclusion and/or stay-away and no contact conditions, and there will be a firearm prohibition
 - Required successful completion of a certified 52-week batterer's intervention (domestic violence) program in a timely manner. I understand progress reports will be submitted to the court by the treatment program at least every 90-days, and I will be required to personally appear in court for periodic program review hearings unless my attendance is excused. I understand that I must pay for the program, which is required to have a sliding fee scale.
 - Payment of a donation up to \$5,000 to a battered women's shelter
 - Possible participation in a chemical dependency program

- I will be ordered to submit to booking by law enforcement within one week of sentencing, if I have not already been booked, so to create a criminal history and record
- In addition to other fines, fees, and restitution, a minimum five hundred dollar (\$500) fee shall be ordered paid under PC § 1203.097(a)(5)
- Mandatory community work service [PC § 1203.097(a)(8)]
- The Victim will be notified of the disposition of this case.
- Mandatory state restitution fine-In addition to Victim Restitution and other fines and fees, the Court will impose a State Restitution Fine in the minimum amount of \$150 and the maximum amount of \$1,000 [PC § 1202.4(b)(1)] A Probation Revocation Restitution Fine will also be imposed in the same amount as the state restitution fine; however, the Probation Revocation Restitution Fine will be suspended upon successful completion of the entire probationary term. [PC § 1202.44]
- Ten Year Firearm Prohibition-The Court will order and the law otherwise provides a ten (10) year firearm prohibition, meaning that I can not own, purchase, receive, possess, or have custody or control over any type of firearm, ammunition, and ammunition feeding devices, including but not limited to magazines, for ten years from the date of conviction. Violation of that prohibition may subject me to separate federal and/or state felony prosecution. The Court will notify the Department of Justice of this conviction. [See PC §§ 29805, 30305, 29855, and 29860] I understand that the Court will also order me to fully and timely comply with the firearms relinquishment requirements of Penal Code § 29810.
- I understand the Court may also impose various civil judgments (not as terms of probation) as follows:
 - Public Defender Reimbursement to the County of Inyo under PC § 987.8(b)
 - Fee for the Probation Department’s Pre-Sentence Investigation and Report under PC § 1203.1b
 - Cost of Formal Probation Supervision under PC § 1203.1ab
 - Accounts Receivable Fee of \$30 for full payment of all fines and fees beyond 90-days, or a \$35 fee for installment payments of fines and fees as provided by PC § 1205(e).

I understand all of the requirements and consequences mentioned above in this section numbered 16, and entitled “Penalty.” []

17. Immigration Consequences - I understand that if I am not a citizen of the United States of America, that conviction of the offense(s) for which I have been charged, or to which I plead guilty or no contest, may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States. 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 from this country, permanent exclusion from reentry to the United States of America, denial of naturalization or citizenship, denial of 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 (drug) offense, a firearm offense, and under certain circumstances, a moral turpitude offense. (Penal Code § 1016.5). []

18. I understand that if I am on probation or parole in any other case, in this or any other jurisdiction, my plea of guilty or no contest in this case may be used against me and result in the violation or revocation of my probation and/or parole, and subject me to the maximum penalties that could be imposed in any other case or cases that I might be on probation or parole. I understand the maximum penalty that can be imposed for any applicable probation or parole violations. []

19. I understand that at the probation and sentencing hearing the Court has the discretion or right to reject the settlement agreement in this case. If the Court does so, I understand my plea(s) will be tendered back to me, and I will be returned to the same procedural status I am in now (with the right to a jury trial), but that would occur at some unknown future date. []

20. I understand that if I plead guilty or no contest, I should assume that doing so is a permanent and final decision. I understand that I will not be allowed to simply change my mind at a future date. I understand that pleas are allowed to be withdrawn only if there is a legal basis and good cause shown for doing so. []

21. I understand that a plea of no contest (*nolo contendere*) will have exactly the same effect in this case as a plea of guilty. []

22. Family Law/Parentage Consequences: I understand that my conviction(s) in this case may be used against me in any present or future child custody and/or visitation litigation. I also understand that as a result of this conviction, under California Family Code Section 3044, for five years there will be a rebuttable presumption against me being awarded sole or joint physical or legal custody of a child. []

23. 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, any or all of the following as a basis for my plea of guilty or no contest and any admission:

- Preliminary Hearing transcript, law enforcement reports, laboratory results, Probation Report, DMV records, and court documents and records []

- I am pleading guilty or no contest to take advantage of a plea agreement, and understand that my attorney will stipulate to a factual basis for the plea. (*People v. West* (1970) 3 Cal.3d 595) []

24. I understand and agree that the facts and circumstances of any counts, charges or cases dismissed with a “Harvey Waiver” may be considered by the Probation Department and the Court in imposing probation terms and/or in the pronouncement of judgment (sentencing) in my case. *[]

PLEAS

25. I acknowledge that I have had an adequate opportunity to discuss the decision to plead guilty or no contest with an attorney and to consider this decision. I understand the rights I am giving up and the consequences of pleading guilty or no contest. I do not have any questions. I have not consumed any alcohol or drugs (including prescription and non-prescription medications) that in any way may be adversely affecting my thinking, judgment, or reasoning ability at this time. []

26. In exchange for changing my plea to guilty or no contest, I have been promised the following:

No other promises have been made to me except as set forth above in writing. No one has threatened me, or anyone close to me, to get me to change my plea(s) to guilty or no contest. []

27. I hereby freely and voluntarily plead _____ to the
(Guilty or No Contest)
following charges(s), and admit the following special allegations, enhancements, prior convictions, and/or violations of probation:

28. I freely and voluntarily admit the **prior conviction(s)** listed on this form. I understand that this admission will increase the penalties which are imposed on me. *[]

29. I freely and voluntarily admit the **probation violation(s)** listed on this form and give up my right to a hearing before a judge regarding the probation violation(s). *

30. I understand that I have the right to a delay of from 6 hours to 5 days prior to being sentenced, I give up this right and agree to be sentenced at this time. *

31. I understand that I have the right to have the Court pronounce judgment within five calendar days from the date of entry of my plea(s) of guilty or no contest, which may be extended to 20 calendar days if probation is being considered. I waive or give up these rights, and agree that my probation and sentencing can be held beyond the 5 day and 20 day time periods. *

32. I understand that I have the right to be sentenced by the Judge who accepts my plea(s) of guilty or no contest. I do hereby enter an *Arbuckle* waiver, and give up my right to be sentenced by the Judge who takes my plea, and agree that I may be sentenced by another Judge. *

33. I understand that I must be present at my probation and sentencing hearing.

34. *Cruz* Waiver – I understand and agree that if I willfully fail to appear in court for sentencing, any plea or sentencing agreement will be void, and the maximum sentence may be imposed. (*People v. Cruz* (1988) 44 Cal.3d 1247) *

DATED: _____

DEFENDANT'S SIGNATURE: _____

ATTORNEY'S STATEMENT

I am the attorney of record for the Defendant. I have reviewed this form and any addenda with my client. I have explained each of the defendant's rights to the defendant and answered all of the defendant's questions with regard to this plea. I have also discussed the facts of the defendant's case with the defendant, and explained the consequences of this plea, the elements of the offense(s), and the possible defenses. I concur in this plea and in the defendant's decision to waive his or her constitutional rights.

Signature of Defendant's Attorney

Date

INTERPRETER'S STATEMENT

I, having been sworn or having a written oath on file, certify that I am a certified interpreter, and truly translated this form to the defendant in the language indicated below. The defendant stated that (s)he understood the contents of the form, and then (s)he initialed and signed the form.

Language: [] Spanish [] Other: (Specify) _____

Court Interpreter's Signature

Type or Print Name

Date

PROSECUTOR'S STATEMENT

The People of the State of California, plaintiff, by its attorney, the District Attorney for the County of Inyo, concur with the Defendant's plea of Guilty/No Contest as set forth above.

Signature

(Print Name & Title)

Date

COURT'S FINDINGS AND ORDER

The Court, having reviewed this form and any addenda, and having questioned the defendant concerning the defendant's constitutional rights and the defendant's plea(s), admission of prior conviction(s) and probation violation(s), if any, finds that the Defendant has expressly, knowingly, understandingly, and intelligently waived his or her constitutional rights. The Court further finds that the defendant's waiver of rights, plea(s) and admission(s) are freely and voluntarily made with a knowing and intelligent understanding of the nature and consequences thereof, and that there is a factual basis for the plea(s) and admission(s). The Court accepts the defendant's plea(s), the defendant's admission to prior conviction(s) and probation violation(s), if any, and orders this form filed and incorporated in the docket by reference as though fully set forth therein.

Judge of the Superior Court

Date