

MISDEMEANOR ARRAIGNMENT

[REVISED 2012]



ADMINISTRATIVE OFFICE
OF THE COURTS

EDUCATION DIVISION/CENTER FOR
JUDICIAL EDUCATION AND RESEARCH

ABOUT CJER

The California Center for Judicial Education and Research (CJER), as the Education Division of the Administrative Office of the Courts (AOC), is responsible for developing and maintaining a comprehensive and quality educational program for the California judicial branch. Formed in 1973 as a joint enterprise of the Judicial Council and the California Judges Association, CJER supports the Chief Justice, the Judicial Council, and the courts by providing an extensive statewide educational program for judicial officers and court staff at both the trial and appellate levels. It includes orientation programs for new judicial officers, court clerks, and administrative officers; continuing education programs for judicial officers, court administrators, and managers; an annual statewide conference for judicial officers and court administrators; video and audiotapes; and judicial benchbooks, benchguides, and practice aids.

CJER GOVERNING COMMITTEE

Hon. Ronald B. Robie, Chair
Court of Appeal, Sacramento

Hon. Robert L. Dondero, Vice-Chair
Superior Court of California, County of San Francisco

Hon. Kimberly A. Gaab
Superior Court of California, County of Fresno

Hon. Mary Thornton House
Superior Court of California, County of Los Angeles

Hon. Barbara A. Kronlund
Superior Court of California, County of San Joaquin

Hon. Beverly Reid O'Connell
Superior Court of California, County of Los Angeles

Ms. Teresa A. Risi
Chief Operations Officer
Superior Court of California, County of Orange

Mr. Michael M. Roddy
Court Executive Officer
Superior Court of California, County of San Diego

Ms. Pat Sweeten
Court Executive Officer
Superior Court of California, County of Alameda

Hon. Theodore M. Weathers
Superior Court of California, County of San Diego

Hon. Arthur A. Wick
Superior Court of California, County of Los Angeles

Advisory Members

Hon. Socrates Peter Manoukian
Superior Court of California, County of Santa Clara
California Judges Association

Hon. Steven Jahr
Administrative Director
Administrative Office of the Courts

CJER PROJECT STAFF

Barry Harding
Senior Attorney, Publications

Iris Okura
Senior Editor

BENCHGUIDE CONSULTANTS

Hon. Henry J. Hall
Superior Court of California, County of Los Angeles

Hon. Morris D. Jacobson
Superior Court of California, County of Alameda

Hon. Phillip H. Pennypacker
Superior Court of California, County of Santa Clara

Editorial comments and inquiries: Barry Harding, Senior Attorney 415-865-7745,
fax 415-865-4335

© 2012 by Judicial Council of California/Administrative Office of the Courts
Published September 2012; covers case law through 54 C4th, 207 CA4th, and all legislation to 7/1/2012

MISDEMEANOR ARRAIGNMENT

I. [§52.1] SCOPE OF BENCHGUIDE

II. [§52.2] PROCEDURAL CHECKLIST: ARRAIGNMENT HEARING

III. APPLICABLE LAW

A. Misdemeanor Arraignment Hearing

1. [§52.3] Presence of Defendant
2. [§52.4] Informing Defendant of Charges
3. [§52.5] Advisement of Rights
4. [§52.6] Appointment of Counsel
 - a. [§52.7] Financial Eligibility Determination
 - b. [§52.8] Notice of Potential Liability for Cost of Legal Services
5. Taking *Faretta* Waiver of Right to Counsel
 - a. [§52.9] Right to Self-Representation
 - b. [§52.10] Assertion of Right to Self-Representation
 - c. [§52.11] Competency To Waive Right to Counsel
 - d. [§52.12] Advising Defendant of Disadvantages of Self-Representation
6. [§52.13] Handling Mentally Ill Defendant
7. [§52.14] Deferred Entry of Judgment/Diversion Eligibility
 - a. [§52.15] Deferred Entry of Judgment Program
 - b. [§52.16] Diversion Program
8. [§52.17] Eligibility for Proposition 36 Drug Treatment
9. Releasing In-Custody Defendant
 - a. [§52.18] Own-Recognizance Release
 - b. [§52.19] Bail Reduction
 - c. [§52.20] Hearing When Defendant Charged With Designated Domestic Violence Offenses
 - d. [§52.21] Release Conditions

10. [§52.22] Receiving Defendant's Plea
11. Probable Cause Determinations
 - a. [§52.23] In-Custody Defendant
 - b. [§52.24] Defendant Held Without Warrant
12. [§52.25] Setting Next Court Appearance
- B. Taking Plea of Guilty or No Contest
 1. [§52.26] Advisement and Waiver of Rights
 2. [§52.27] Advisement of Direct Consequences of Plea
 3. [§52.28] Entry of Plea by Counsel

IV. SAMPLE FORMS

- A. [§52.29] Script: Plea of Guilty or No Contest
- B. [§52.30] Script: Proposition 36 Conditional Plea of Guilty or No Contest
- C. [§52.31] Written Form: Plea of Guilty or No Contest
- D. [§52.32] Written Form: Advisement and Waiver of Right to Counsel

V. [§52.33] ADDITIONAL REFERENCES

TABLE OF STATUTES

TABLE OF CASES

I. [§52.1] SCOPE OF BENCHGUIDE

This benchguide provides an overview of the procedure for handling a misdemeanor arraignment. It includes a procedural checklist, a brief summary of the applicable law, and spoken and written forms. For a discussion of felony arraignment procedures, see California Judges Benchguide 91: *Felony Arraignment and Pleas* (Cal CJER).

II. [§52.2] PROCEDURAL CHECKLIST: ARRAIGNMENT HEARING

(1) *Call the case.* If the defendant is not present in person or by counsel, order a bench warrant for the defendant's arrest. Pen C §978.5.

(2) *Determine if an interpreter is needed.* For discussion, see §52.4.

(3) *Ascertain whether the complaint is in the defendant's true name, and if not, ask the defendant or defense counsel to state the defendant's true name.* Correct the record. Pen C §989. For discussion, see §52.4.

(4) *If the defendant appears with counsel, determine if the defendant waives formal arraignment.* Generally, defense counsel will indicate representation of the defendant and waive a reading of the complaint and advisement of rights.

(5) *If the defendant appears without counsel, inform the defendant of the charges and his or her constitutional rights, including the right to counsel.* If the defendant desires the assistance of counsel, continue the case to allow the defendant to obtain private counsel or to speak with the public defender. For discussion, see §§52.5–52.6. If the defendant wishes to proceed in pro per, take a waiver under *Faretta v California* (1975) 422 US 806, 95 S Ct 2525, 45 L Ed 2d 562. For discussion, see §§52.9–52.12. For written *Faretta* waiver form, see §52.31.

(6) *When the defendant's mental health is in question, determine if a Pen C §1368 competency inquiry is appropriate.* For discussion, see §52.13.

(7) *Hear any request for deferred entry of judgment or diversion.* If the prosecutor finds the defendant eligible for deferred entry of judgment or diversion, take the defendant's waiver of time for trial, refer the case to the probation department for an investigative report, and set a hearing date. If probation department resources are not available to prepare an investigative report, the court may summarily grant deferred entry of judgment if the defendant pleads guilty to a qualifying drug offense and waives time for sentencing. Pen C §1000.1(b). For discussion, see §§52.14–52.16.

(8) *If the defendant is charged with a drug possession offense, inquire as to drug treatment eligibility under Proposition 36 (Pen C §§1210–1210.1).* When defendant is charged with personal use, possession for personal use, or transportation for personal use of a controlled substance, secure a time waiver from the defendant, refer the case to the probation department for a determination of defendant's eligibility under Pen C §1210, and set a hearing date. Some courts take a plea of guilty from defendants who appear to qualify for Proposition 36 treatment in advance of an eligibility report, and condition that plea on a finding of eligibility. For discussion, see §52.17. For a conditional plea script, see §52.30.

(9) *Hear and decide any request for own-recognizance release or bail reduction.* For discussion, see §§52.18–52.21. If the defendant is charged with certain misdemeanor domestic violence offenses, the court must conduct a Pen C §1270.1 hearing before setting bail in an amount that deviates from the county's bail schedule or releasing the defendant on his or her own recognizance. See §52.20.

(10) *Ask the defendant or defense counsel if the defendant is ready to plead.* Pen C §988. If the defendant is not ready to plead, continue the case for no more than seven days. Pen C §990. For discussion, see §52.22.

(11) *If the defendant pleads not guilty:*

- *In-custody defendants: Hear and decide any request for a probable cause determination.* For discussion, see §§52.23–52.24.
- *Ask the defendant or defense counsel whether the defendant waives time for trial.*
- *Assign a date for the next court appearance.* For discussion, see §52.25.

(12) *If the defendant pleads guilty:*

- *Ask the defendant to execute a waiver-of-rights and plea form or take an oral waiver and plea.* For spoken and written forms for use in taking a guilty or no-contest plea, see §§52.29, 52.31.
- *Impose sentence if the defendant waives time for sentencing or set a date for judgment and sentencing.* For discussion, see §52.25.

III. APPLICABLE LAW

A. Misdemeanor Arraignment Hearing

1. [§52.3] Presence of Defendant

A defendant charged with a misdemeanor need not personally appear at the arraignment hearing, but may appear through counsel. Pen C §§977(a)(1), 1429; *Simmons v Superior Court* (1988) 203 CA3d 71, 76, 249 CR 721. A written waiver of the defendant's personal appearance is not required. Defense counsel's verbal representations that counsel is authorized to appear on the defendant's behalf are sufficient to establish a knowing waiver of the defendant's right to be present. *People v American Bankers Ins. Co.* (1987) 191 CA3d 742, 746, 236 CR 501.

Domestic violence exception. A defendant charged with a misdemeanor involving domestic violence (as defined in Fam C §6211) or a misdemeanor violation of Pen C §273.6 (violation of protective order), must be present at arraignment and sentencing, and at any time during the proceedings when ordered by the court for the purpose of being informed of the conditions of a Pen C §136.2 protective order. Pen C §977(a)(2).

DUI exception: The court may, in an appropriate case, order a defendant charged with a misdemeanor offense involving driving under the influence to be present at arraignment, at the time of plea, or at sentencing. Pen C §977(a)(3). The subject misdemeanor DUI offenses are Pen C §191.5(b), Veh C §23103 as specified in Veh C §23103.5, Veh C §23152, and Veh C §23153. Pen C §977(a)(3).

Video arraignment. The court may permit the arraignment to be conducted by two-way electronic audio-video communication between the

defendant and the courtroom in place of the defendant's appearance in the courtroom. Pen C §977(c). A defendant who participates in a video arraignment must sign a written waiver of the right to appear. Pen C §977(c). If the defendant is represented by counsel, the attorney must be present with the defendant at the video arraignment, and may enter a plea during the arraignment. Pen C §977(c).

2. [§52.4] Informing Defendant of Charges

When the defendant's case is called, the court will read the misdemeanor complaint to the defendant and deliver a copy of the complaint to the defendant on his or her request. Pen C §988. Some courts summarize the charge(s) instead of reading the complaint. If the defendant appears with counsel, the court should seek from defense counsel a waiver of a formal reading of the complaint. Experienced counsel often initiate the waiver.

The defendant must be informed that if the name in the complaint is not the defendant's true name, the defendant must state his or her true name, or the name in the pleading will be used to proceed against him or her. If the defendant provides another name, entry of the correction must be made in the court minutes, and the subsequent proceedings may be taken in that name, referring also to the other name. Pen C §989.

If the defendant is unable to understand English, the court must continue the defendant's case until an interpreter can be appointed. Cal Const art I, §14 (defendant unable to understand English has right to interpreter throughout criminal proceedings); *People v Carreon* (1984) 151 CA3d 559, 567, 198 CR 843 (court must appoint interpreter on showing of need). See Standards of Judicial Administration §2.10, which outlines the procedures for determining the need for a court interpreter.

3. [§52.5] Advisement of Rights

The court must advise defendants of their constitutional rights before arraignment and plea. *In re Johnson* (1965) 62 C2d 325, 330, 42 CR 228.

Defendants must be informed of the following rights:

- *To counsel.* The defendant has a right to be represented by an attorney at the arraignment. If the defendant is indigent and desires assistance of counsel, the court must appoint counsel to represent the defendant without charge. Cal Const art I, §15; Pen C §§987(a), 858.
- *To a speedy and public trial.* An in-custody defendant must be brought to trial within 30 days after the arraignment or entry of plea, whichever occurs later. If the defendant is not in custody, the time is 45 days. Failure to meet these statutory time periods may

result in dismissal of the case. The defendant may waive time for trial, in which case the court may set a trial date beyond the prescribed limits. Cal Const art I, §15; Pen C §§1382(a)(3), (c), 686; *In re Smiley* (1967) 66 C2d 606, 629, 58 CR 579.

- *To a trial by jury.* Cal Const art I, §16; see *People v Garza* (1983) 142 CA3d 131, 133, 190 CR 824 (court is not required to advise defendant that trial jury is composed of 12 persons).
- *To process of the court.* The defendant has the right to compel attendance of witnesses on his or her behalf. Cal Const art I, §15; Pen C §686.
- *To confront and cross-examine witnesses.* The defendant has the right to confront and cross-examine witnesses who testify against the defendant. Cal Const art I, §15; Pen C §686.
- *To remain silent.* Defendants may not be compelled to take the witness stand and testify against themselves. Cal Const art I, §15; Evid C §§930, 940.
- *To release on reasonable bail.* An in-custody defendant has the right to be released on reasonable bail. Cal Const art I, §12; Pen C §§1271, 1458; *In re Weiner* (1995) 32 CA4th 441, 444, 38 CR2d 172.

The court may advise defendants in misdemeanor cases of their rights, either individually or collectively. *People v Prince* (1976) 55 CA3d Supp 19, 24–25, 32, 127 CR 296. A collective advisement given to all defendants in the courtroom for arraignment is sufficient absent proof of its inadequacy concerning a particular defendant. *In re Johnson, supra*, 62 C2d at 329–333. Courts that advise en masse commonly use videotapes or audiotapes. Printed advisements are sometimes used instead of or together with a verbal advisement. Courts located in counties that have a significant population of non-English-speaking persons often provide forms printed in other languages.

4. [§52.6] Appointment of Counsel

A defendant in a criminal case has a federal constitutional right to be represented by counsel at all critical stages of the prosecution. *People v Marshall* (1997) 15 C4th 1, 20, 61 CR2d 84. The Sixth Amendment right to counsel attaches at the time adversary judicial proceedings are initiated against a defendant, *e.g.*, when the defendant is indicted or arraigned. *People v Frye* (1998) 18 C4th 894, 987, 77 CR2d 25, disapproved on other grounds in 45 C4th 390, 421 n22. The right to counsel is self-executing, *i.e.*, the defendant is not required to make a request for counsel in order to be entitled to legal representation. *People v Marshall, supra*, 15

C4th at 20. A defendant has a right to counsel unless and until the defendant affirmatively waives that right. 15 C4th at 20.

When a defendant appears at arraignment without counsel, the court must inform the defendant of his or her right to counsel before being arraigned and ask if the defendant desires the assistance of counsel. See Cal Const art I, §§14–15; Pen C §987(a). If the defendant is able to employ counsel, the court must continue the case for a reasonable period to allow the defendant to obtain counsel. *In re Johnson* (1965) 62 C2d 325, 329 n2, 42 CR 228. If the defendant desires but cannot afford counsel, the court must appoint counsel to represent the defendant. Pen C §987(a); Cal Const art I, §15. Many courts do not make a formal appointment, but rather continue the case for a short period and refer the defendant to the public defender's office.

In cases involving codefendants, the court must appoint separate and independent counsel for each defendant. *People v Mroczko* (1983) 35 C3d 86, 115, 197 CR 52.

a. [§52.7] Financial Eligibility Determination

In determining whether a defendant is unable to afford to employ counsel, the court may require the defendant to submit a financial statement or other financial information under penalty of perjury to the court. Pen C §987(c). The court may also order a defendant to appear before a designated county officer to inquire into the defendant's financial status. Pen C §987(c). The county officer who conducts the inquiry must provide the court with a written recommendation and the reasons in support of the recommendation. Pen C §987(c). Some courts provide financial eligibility forms for defendants to complete and sign at the beginning of the arraignment proceedings, which may be reviewed as each case is called. In other courts, the public defender's office interviews the defendant and determines the defendant's eligibility for its services. The court's determination of the defendant's financial eligibility for appointed counsel must be made on the record. Pen C §987(c).

b. [§52.8] Notice of Potential Liability for Cost of Legal Services

After finding a defendant eligible for court-appointed counsel, the court must inform the defendant that he or she may be required to pay all or a portion of the cost of counsel on conclusion of the criminal proceedings if the defendant has the present ability to pay. Pen C §987.8(f). The notice must inform the defendant that such an order has the same force and effect as a judgment in a civil action, and is subject to enforcement against the defendant's property in the same manner as any other money judgment. Pen C §987.8(f). See *People v Smith* (2000) 81

CA4th 630, 637–639, 96 CR2d 856. This advisement usually appears on financial eligibility forms. The clerk must note on the docket that this admonition was made at the time of appointment. See *People v Amor* (1974) 12 C3d 20, 29, 114 CR 765.

5. Taking *Faretta* Waiver of Right to Counsel

a. [§52.9] Right to Self-Representation

Under the Sixth Amendment, a criminal defendant has a constitutional right to self-representation and may waive the right to counsel. *Faretta v California* (1975) 422 US 806, 819, 95 S Ct 2525, 45 L Ed 2d 562. The court must grant a defendant's request for self-representation if three conditions are met:

(1) The defendant must be mentally competent, and must make the request knowingly and intelligently, having been apprised by the court of the dangers of self-representation;

(2) The defendant must make the request unequivocally; and

(3) The defendant must make the request within a reasonable time before trial.

422 US at 835; *Godinez v Moran* (1993) 509 US 389, 399–400, 113 S Ct 2680, 125 L Ed 2d 321; *People v Jenkins* (2000) 22 C4th 900, 959, 95 CR2d 377. A defendant who exercises the right to self-representation cannot later complain that the quality of his or her defense amounted to a denial of the effective assistance of counsel. *People v Garcia* (2000) 78 CA4th 1422, 1430, 93 CR2d 796.

b. [§52.10] Assertion of Right to Self-Representation

The defendant must make an unequivocal request to represent himself or herself. *People v Valdez* (2004) 32 C4th 73, 97–98, 8 CR3d 271; *People v Welch* (1999) 20 C4th 701, 729, 85 CR2d 203. A defendant's request is not unequivocal if it does not represent a genuine desire for self-representation, but is instead made out of anger, frustration or ambivalence, or to delay or disrupt the court proceedings. *People v Danks* (2004) 32 C4th 269, 295–296, 8 CR3d 767; *People v Marshall* (1997) 15 C4th 1, 23, 61 CR2d 84. In determining whether a request for self-representation is unequivocal, the court should consider not only whether the defendant has stated the motion clearly, but also the defendant's conduct and other utterances in court. 15 C4th at 25.

c. [§52.11] Competency To Waive Right to Counsel

In *Godinez v Moran* (1993) 509 US 389, 397–401, 113 S Ct 2680, 125 L Ed 2d 321, the Supreme Court held that the competency standard for waiving the right to counsel is the same as the competency standard for

standing trial. That is, a defendant who has the mental capacity to understand the nature and object of the criminal proceedings, to consult with counsel, and to assist in the preparation of a defense, is competent to waive counsel.

The Supreme Court revisited the relationship between mental competency to stand trial and the right of self-representation in *Indiana v Edwards* (2008) 554 US 164, 128 S Ct 2379, 171 L Ed 2d 345. The Court considered the question of whether the Constitution permits a state to limit a defendant's right to self-representation by insisting on representation at trial when the defendant has been found sufficiently competent to stand trial. The Court ruled that even if a defendant has been found mentally competent to stand trial, a trial court may insist that the defendant be represented by counsel when the defendant suffers from severe mental illness to the point where he or she is not competent to conduct the trial proceedings alone. 554 US at 172–178. The Court stated that the nature of mental illness cautions against the use of a single mental competence standard for deciding both whether a defendant who is represented by counsel can proceed to trial and whether a defendant who goes to trial must be permitted to represent himself. 554 US at 174–177. California has accepted the *Edwards* invitation for state courts to set a higher standard for self-representation than for competency to stand trial. In *People v Johnson* (2012) 53 C4th 519, 525–531, 136 CR3d 54, the California Supreme Court expressly held that trial courts may deny self-representation in those cases where *Edwards* permits it.

If the court entertains any doubts about the defendant's competency, it must conduct an inquiry, usually by ordering a psychiatric evaluation. See *People v Welch* (1999) 20 C4th 701, 730, 85 CR2d 203 (court appointed psychiatrist under Evid C §730 to evaluate defendant on issue of whether he had mental capacity to waive constitutional right to counsel with a realization of the probable risks and consequences of his action). The court may not, however, consider the wisdom of the defendant's decision to undertake self-representation. *Godinez v Moran, supra*, 509 US at 399–400; *People v Welch, supra*, 20 C4th at 732–734 (court should not have denied defendant's *Faretta* motion based on its conclusion that defendant was not competent to present an *adequate* defense and that defendant must possess some minimal ability to represent himself). Nor may the court consider the defendant's level of education or particular work experience in order to invoke the right to self-representation. *People v Robinson* (1997) 56 CA4th 363, 372, 65 CR2d 406. The severity of the charges is also not an issue in determining whether self-representation is proper. 56 CA4th at 372.

d. [§52.12] Advising Defendant of Disadvantages of Self-Representation

The court must advise the defendant of the dangers and disadvantages of self-representation, *e.g.*, by asking whether the defendant understands the charges and the potential penal consequences, and by advising the defendant that he or she will be treated as any other attorney, can expect no special treatment or advice from the court during trial, and does not have a right to co-counsel, or to advisory or standby counsel. *People v Jenkins* (2000) 22 C4th 900, 959, 95 CR2d 377 (record must show that defendant knew what he or she was doing and that defendant's choice was made with eyes open); *People v Noriega* (1997) 59 CA4th 311, 319-322, 69 CR2d 127 (conviction reversed for court's failure to so advise defendant before granting motion for self-representation). These advisements may be contained in a written form that defendants read and sign. For written form, see §52.32.

6. [§52.13] Handling Mentally Ill Defendant

A person cannot be tried or sentenced while that person is mentally incompetent. Pen C §1367. A person is mentally incompetent who, as a result of a mental disorder or developmental disability, is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner. Pen C §1367.

If at the arraignment, the judge or defense counsel believes that the defendant may be mentally incompetent, the court may order a competency hearing, as outlined in Pen C §1369, and suspend the proceedings. Pen C §1368. If the defendant is not represented by counsel, the court must appoint an attorney and declare a recess, if requested by the defendant or defense counsel, to allow counsel to confer with the defendant and to form an opinion as to whether the defendant is mentally incompetent. Pen C §1368(a).

If, after the completion of the hearing, the defendant is found competent, the criminal proceedings are reinstated and judgment may be pronounced. Pen C §1370(a)(1). If the defendant is found incompetent, the proceedings remain suspended and the defendant is sent to a state hospital or other treatment facility. Pen C §1370(a)(1).

BULLETIN: The Second District Court of Appeal has declared that Pen C §1367.1, requiring in misdemeanor cases that incompetency proceedings commence with a 72-hour evaluation under Pen C §4011, is unconstitutional, holding that the statute deprives misdemeanor defendants of equal protection. The court found no compelling state interest to require a misdemeanor defendant, believed to be incompetent because of a mental disorder, to submit to involuntary evaluation and treatment under the

Lanterman-Petris-Short Act instead of, or before, a competency determination. *Pederson v Superior Court* (2003) 105 CA4th 931, 939–942, 130 CR2d 289. The court directs all trial courts to handle misdemeanor cases according to Pen C §1368, in the same manner as felony cases. 105 CA4th at 943.

See California Judges Benchguide 63: *Competence To Stand Trial* (Cal CJER) for a comprehensive discussion of court procedures under Pen C §§1368–1370.01.

7. [§52.14] Deferred Entry of Judgment/Diversion Eligibility

The defendant may request or the prosecutor may recommend deferred entry of judgment or diversion at the arraignment hearing. These programs provide qualifying misdemeanor defendants an opportunity to avoid criminal prosecution and the stigma of a criminal conviction through successful completion of a program of counseling, treatment, or rehabilitation. Pen C §§1000.1, 1001.1; *People v Martinsen* (1987) 193 CA3d 843, 847, 238 CR 530.

a. [§52.15] Deferred Entry of Judgment Program

In cases involving charges of narcotics and drug abuse, the defendant may be eligible to participate in a deferred entry of judgment program (Pen C §§1000–1000.4). A defendant is eligible to participate in a deferred entry of judgment program if (1) the defendant has no conviction for any offense involving controlled substances before the alleged commission of the charged offense, (2) the charged offense does not involve a crime of violence or threatened violence, (3) there is no evidence of a violation relating to narcotics or restricted dangerous drugs other than a violation of the sections listed in Pen C §1000(a), (4) the defendant’s record does not indicate that probation or parole has been revoked without thereafter being completed, (5) the defendant has not completed or been terminated from diversion or deferred entry of judgment within five years before the alleged commission of the charged offense, and (6) the defendant has no prior felony conviction within five years before the charged offense. Pen C §1000(a).

The deferred entry of judgment program requires a defendant to plead guilty to the drug charge, with the entry of judgment deferred while the defendant participates in a drug treatment program for at least 18 months but no longer than three years. Pen C §§1000.1, 1000.2. The court must determine if the defendant is suitable for participation in such a program, *i.e.*, if the defendant would benefit from such a program. See Pen C §1000.2. If the defendant successfully completes the program, the court must dismiss the charge. Pen C §1000.3.

The prosecutor is responsible for reviewing the case file as soon as possible after the initial filing of the charge(s) to determine the defendant's eligibility for deferred entry of judgment. Pen C §1000(b). When the prosecutor has completed a review of the case and finds that the defendant meets the eligibility criteria under Pen C §1000(a), the prosecutor files with the court a written declaration or states for the record the grounds on which the determination is based. Pen C §1000(b). The court may not overrule the prosecutor's determination that a defendant is ineligible for deferred entry of judgment. *People v Sturiale* (2000) 82 CA4th 1308, 1313-1314, 98 CR2d 865.

If the defendant consents to a program referral and waives his or her right to a speedy trial, the court may summarily grant deferred entry of judgment or refer the case to the probation department for a report on the defendant's suitability for the program and set a date for a deferred entry of judgment hearing. Pen C §1000.1(b). The defendant must consent to a waiver of his or her speedy trial rights, plead guilty to the charge(s), and waive time for pronouncement of judgment before the court may grant deferred entry of judgment. Pen C §1000.1(b).

For a comprehensive discussion of deferred entry of judgment procedures, see California Judges Benchguide 62: *Deferred Entry of Judgment/Diversion* (Cal CJER).

b. [§52.16] Diversion Program

A defendant may be eligible to participate in a diversion program for violation of certain misdemeanors. When diversion is granted, criminal proceedings are suspended pending the defendant's successful completion of the program. Pen C §§1001.1, 1001.50. A defendant must consent to a waiver of his or her speedy trial rights before diversion may be ordered, but an admission of guilt is not required. Pen C §§1001.3, 1001.53. Diversion is available to persons with cognitive developmental disabilities charged with a misdemeanor (Pen C §§1001.20-1001.34). In some counties, diversion is available to persons charged with contributing to the delinquency of a minor under Pen C §272 (Pen C §§1001.70-1001.75) or writing bad checks (Pen C §§1001.60-1001.67). In addition, Pen C §§1000.5 (drug court diversion) and 1001.50-1001.55 authorize counties to establish pretrial diversion programs for misdemeanants who do not qualify for diversion under the other statutory programs.

A defendant who is charged with both divertible and nondivertible offenses can be diverted on the divertible offense and go to trial on the other charge. *Harvey v Superior Court* (1974) 43 CA3d 66, 69, 117 CR 383; *People v Fulk* (1974) 39 CA3d 851, 855, 114 CR 567. However, the prosecutor may agree to dismiss the nondivertible offense on successful completion of diversion.

For a comprehensive discussion of pretrial diversion procedures, see California Judges Benchguide 62: *Deferred Entry of Judgment/Diversion* (Cal CJER).

8. [§52.17] Eligibility for Proposition 36 Drug Treatment

BULLETIN: A legislative measure (Stats 2006, ch 63 (SB 1137)), amending the Proposition 36 drug treatment and probation provisions, was found invalid in its entirety because certain terms of SB 1137 were inconsistent with the purposes of Proposition 36, and the measure reflected a legislative intent that its provisions would not be severable. *Gardner v Schwarzenegger* (2009) 178 CA4th 1366, 101 CR3d 229.

If the defendant is charged with personal use, possession for personal use, or transportation for personal use of a controlled substance, he or she may qualify for drug treatment under the provisions of Proposition 36 (Pen C §§1210–1210.1). The court must grant probation as an alternative to incarceration to qualifying defendants convicted of “nonviolent drug possession offenses,” as defined in Pen C §1210(a). Pen C §1210.1(a). Courts must impose, as a condition of probation, completion of a drug treatment program not to exceed 12 months, with optional aftercare of up to six months. Pen C §§1210(b), 1210.1(c)(3). The court may also require that the defendant participate in vocational training, family counseling, literacy training, and/or community service. Pen C §1210.1(a). Qualifying defendants must consent to participate in a drug treatment program, must be amenable to treatment, and must not otherwise be excluded from participation under Pen C §1210.1(b). Trial courts that impose drug treatment are not otherwise limited in the type of probation conditions they may impose. Pen C §1210.1(a).

A determination of whether the defendant may be eligible for Proposition 36 sentencing may be initiated at arraignment on the suggestion of counsel, or on inquiry by the court. The prosecutor may formalize the process by filing with the complaint a statement of eligibility.

Penal Code §1210.1 does not outline presentence procedures to be followed by the courts when presented with a Proposition 36 case. Some courts may want to continue the case to allow the probation department to conduct an eligibility review, and to allow for a laboratory analysis of the substance possessed by the defendant or that was found in the defendant’s blood or urine. The court may also wish to assign a drug professional to conduct a preliminary treatment assessment. In the alternative, the court may ask the defendant to enter a conditional plea of guilty or no contest before an eligibility review and treatment assessment. If the defendant is

found ineligible for the drug treatment program or the laboratory analysis proves negative for the presence of a controlled substance, the defendant may be allowed to withdraw the plea. For a conditional plea script, see §52.30.

9. Releasing In-Custody Defendant

a. [§52.18] Own-Recognizance Release

A misdemeanor defendant in custody at the time of arraignment is entitled to an own-recognizance (OR) release unless the court makes a finding on the record that this release will compromise public safety or will not reasonably ensure that the defendant will appear at the next court date. Pen C §1270(a). Public safety must be the primary consideration in the court's determination whether to release a defendant on his or her own recognizance. Pen C §1270(a).

In determining whether the defendant will return to court if released on his or her own recognizance, the court must consider the defendant's ties to the community, the defendant's record of appearance at past court hearings or of flight to avoid prosecution, and the severity of the possible sentence the defendant faces. *Van Atta v Scott* (1980) 27 C3d 424, 438, 166 CR 149. The defendant bears the burden of producing evidence of community ties, including employment or other sources of income, the duration and location of the defendant's residence, property holdings, and family attachments. The prosecution bears the burden of producing evidence of the defendant's record of appearance at prior court hearings and the severity of the possible sentence. 27 C3d at 438-444.

Defendants released on OR must file a signed release agreement with the clerk of the court or other person authorized to accept bail. Pen C §1318. This agreement includes the defendant's promise to appear at all times and places as ordered, to obey all reasonable conditions imposed by the court, and not to leave the state without the court's permission. Pen C §1318(a)(1)-(3). It must also contain an extradition waiver and an acknowledgment that the defendant has been informed of the consequences of and penalties for violation of the conditions of release. Pen C §1318(a)(4)-(5).

b. [§52.19] Bail Reduction

If the court denies an in-custody defendant an OR release, the defendant may request the court to reduce the amount of bail. Pen C §§1289, 1458. In setting, reducing, or denying bail, the court must consider the protection of the public, the seriousness of the offense charged, the defendant's previous criminal record, and the probability of the defendant's appearance at the trial or hearing of the case. Public safety

is the primary consideration. Pen C §1275(a). In addition, the court must consider (1) whether the defendant has caused any alleged injuries or made any threats to any victim or witness to the crime charged, (2) the defendant's alleged use of weapons in the commission of the crime, and (3) the defendant's alleged use or possession of controlled substances. Pen C §1275(a). If the defendant is charged with a narcotics offense (Health & S C §§11350–11392), the court must consider the alleged amounts of controlled substances involved in the commission of the offense and whether the defendant is currently released on bail for another narcotics violation. Pen C §1275(b).

c. [§52.20] Hearing When Defendant Charged With Designated Domestic Violence Offenses

The court must conduct a hearing before a defendant charged with certain misdemeanor domestic violence offenses may be released on bail in an amount that is either more or less than the amount contained in the bail schedule for that offense or may be released on his or her own recognizance. Pen C §1270.1(a). These offenses include Pen C §243(e)(1) (battery against spouse, cohabitant, or co-parent), Pen C §273.5 (corporal injury on spouse, cohabitant, or co-parent), and Pen C §646.9 (stalking). Pen C §1270.1(a)(2)–(3). The prosecuting and defense attorneys must be given a two-court-day written notice and an opportunity to be heard on the matter. Pen C §1270.1(b). If the defendant does not have counsel, the court must appoint counsel for purposes of the hearing. Pen C §1270.1(b). The hearing must be held within the period prescribed in Pen C §825 for being brought before a magistrate (48 hours excluding Sunday and holidays). Pen C §1270.1(b). If a request for bail reduction or own-recognizance release is made at the hearing required under Pen C §825, the court must exercise its discretion to grant or deny the request regardless of whether notice was given. *Dant v Superior Court* (1998) 61 CA4th 380, 390, 71 CR2d 546.

- ☛ **JUDICIAL TIP:** Case law does not address the situation where a request by the defendant for OR release or bail reduction or a request by prosecutor for a bail increase is made after the 48-hour time requirement of Pen C §825 has expired. It appears that the best practice in these situations is to allow the requesting party to move forward with the bail or OR motion and require a two-day written notice of hearing from that party. The Court should comply with all other procedural requirements of Pen C §1270.1 when hearing the bail motion.

At the hearing, the court must consider evidence of past court appearances by the defendant, the maximum potential sentence that may

be imposed, and the danger that may be posed to other persons if the defendant is released. Pen C §1270.1(c). In determining whether to release the defendant on his or her own recognizance, the court must consider the potential danger to other persons, including threats the defendant has made and any past acts of violence. The court must also consider any evidence offered by the defendant regarding his or her ties to the community and ability to post bail. Pen C §1270.1(c). If the judge or magistrate sets bail in an amount that is either more or less than the amount contained in the bail schedule for the offense, the judge or magistrate must state the reasons for this decision and address the issue of any threats made against the victim or witness. These matters must be included in the record. Pen C §1270.1(d).

If the defendant is charged with a misdemeanor offense of violating a domestic violence order, the court, under Pen C §1269c, may set bail at an amount exceeding that set forth in the bail schedule without a hearing, provided an oral or written declaration of facts justifying the increase is presented under penalty of perjury by a sworn peace officer. Pen C §1270.1(e).

d. [§52.21] Release Conditions

The court may attach conditions to the granting of a bail reduction or OR release if these conditions are reasonably related to an attempt to ensure subsequent court appearances. Pen C §§1269c, 1270(a); *McIntosh v Municipal Court* (1981) 124 CA3d 1083, 1085, 177 CR 683 (defendant's signed statement stipulating that defendant will not trespass or blockade nuclear plant was not valid condition). The release of a defendant may be conditioned on his or her participation in a residential drug or alcohol rehabilitation program. *People v Sylvestry* (1980) 112 CA3d Supp 1, 7, 169 CR 575. Requiring a defendant to submit to random searches of his or her person and possessions for narcotics is not a valid release condition. *People v Barbarick* (1985) 168 CA3d 731, 735, 214 CR 322. However, in *In re York* (1995) 9 C4th 1133, 40 CR2d 308, the Supreme Court held that an *accused felon* can be required to submit to random drug testing and warrantless searches as a condition of OR release. The court stated that trial courts have broad discretion to impose reasonable conditions of felony OR release that are not related to ensuring a defendant's future court appearance, but relate to the furtherance of public safety. However, the court did not reach the question of whether a random drug testing and warrantless search condition could be required of a defendant charged with a misdemeanor. 9 C4th at 1138 n2.

For a comprehensive discussion of bail and OR procedures, see California Judges Benchguide 55: *Bail and Own-Recognizance Release* (Cal CJER).

10. [§52.22] Receiving Defendant's Plea

Following the reading of the complaint and the appointment of counsel, the court asks the defendant whether he or she is ready to plead. Pen C §988. See Pen C §1016 (possible pleas). The plea may be made either by the defendant or by defense counsel. See §52.28. If the defendant is not ready to enter a plea, the court must continue the matter for not more than seven days. Pen C §990. If the defendant refuses to answer the complaint, the court must enter a plea of not guilty. Pen C §1024.

No-contest plea. A plea of no contest has the same legal effect as a plea of guilty and is subject to the court's approval. Before accepting a plea of no contest, the court should advise the defendant that a plea of no contest shall be considered the same as a plea of guilty and that the defendant will be sentenced as if he or she pleaded guilty. Pen C §1016(3) (court "shall ascertain" whether defendant understands nature of no-contest plea). A no-contest plea may not be used against the defendant as an admission in any civil suit based on the same act. Pen C §1016(3). A defendant who pleads no contest must be advised of and waive the same constitutional rights as a defendant who pleads guilty. See §52.26.

Plea on prior conviction. If the defendant pleads guilty or not guilty and the complaint charges a prior conviction, the court must ask the defendant whether he or she admits or denies the previous conviction. The response must be entered in the minutes. The defendant's refusal to answer is equivalent to a denial. Pen C §1025(a). If the defendant admits the prior conviction and pleads not guilty to the current charge(s), the prior conviction cannot be read to the jury or alluded to during trial except as otherwise provided by law. Pen C §1025(e).

11. Probable Cause Determinations

a. [§52.23] In-Custody Defendant

An in-custody defendant who pleads not guilty to misdemeanor charges may request the court to determine whether there is probable cause to believe that a public offense has been committed and that the defendant is the perpetrator. Pen C §991(a). The court must make this determination immediately unless it grants a continuance for good cause not to exceed three court days. Pen C §991(b). No notice of a Pen C §991 hearing is required, and the motion may be made orally.

In determining the existence of probable cause, the court must consider the following: (1) any arrest warrant with supporting affidavits; (2) the sworn complaint together with any documents incorporated by reference, including the police report; and (3) any other documents of similar reliability. Pen C §991(c); *In re Walters* (1975) 15 C3d 738, 751, 126 CR 239. If the court concludes that there is probable cause to believe

that the defendant has committed the charged offense, the court must set the matter for trial. However, if the court concludes that probable cause does not exist, it must dismiss the complaint and release the defendant. Pen C §991(d).

b. [§52.24] Defendant Held Without Warrant

A defendant held in custody without warrant is entitled to a probable cause hearing no later than 48 hours after his or her arrest, *not* excluding weekends or holidays. *County of Riverside v McLaughlin* (1991) 500 US 44, 111 S Ct 1661, 114 L Ed 2d 49. This hearing may be combined with the arraignment if held within the 48-hour time limit. 500 US at 58.

A hearing held within 48 hours is not immune from a challenge from the defendant if he or she can prove his or her probable cause determination was delayed unreasonably. Examples of unreasonable delay include delays for gathering additional evidence to justify the arrest, and delay motivated by ill will against the defendant. 500 US at 56. In evaluating defendant's challenge, the court must allow a substantial degree of flexibility, taking into account the practical realities of pretrial procedures. 500 US at 56-57.

If the defendant does not receive a probable cause determination within 48 hours of arrest, the burden shifts to the prosecution to demonstrate the existence of a bona fide emergency or other extraordinary circumstance justifying the delay. 500 US at 57.

12. [§52.25] Setting Next Court Appearance

On a plea of not guilty, the court will set a date for a pretrial conference or trial, or both. The court may also schedule pretrial motions (*e.g.*, Pen C §1538.5 motion to suppress evidence) at the defendant's request. Cal Rules of Ct 4.100(1).

In misdemeanor cases, the court must set trial no later than 30 days after the defendant is arraigned or enters a plea, whichever occurs later, if the defendant is in custody at the time of arraignment or plea. Defendants not in custody must be brought to trial within 45 days of arraignment or plea. Pen C §1382(a)(3). However, defendants not in custody commonly waive time for trial. A time waiver by a defendant not represented by counsel is effective only after the court advises the defendant of his or her rights under Pen C §1382 and the effect of a time waiver. Pen C §1382(c); *In re Smiley* (1967) 66 C2d 606, 629, 58 CR 579.

If the defendant pleads guilty or no contest, the court must pronounce judgment not less than six hours nor more than five days after the plea, unless (1) the defendant waives the postponement or (2) the court requests a presentence report from the probation department. Pen C §1449. Courts routinely impose sentence on acceptance of the plea, after obtaining the

defendant's waiver of these time limits. The court may extend the time to pronounce judgment up to 20 judicial days in any case in which probation is considered, except that on the request of the defendant or the probation officer, the court may further extend the time an additional 90 days. Pen C §1449.

B. Taking Plea of Guilty or No Contest

1. [§52.26] Advisement and Waiver of Rights

A defendant's guilty or no-contest plea to a misdemeanor is valid only if it is voluntarily and intelligently made. *Boykin v Alabama* (1969) 395 US 238, 242, 89 S Ct 1709, 23 L Ed 2d 274. Before accepting the plea, the court must expressly advise the defendant and obtain his or her waiver of the constitutional rights to trial by jury, to confront and cross-examine witnesses, and against self-incrimination. The record must show explicit advisements and waivers of these constitutional rights. 395 US at 243; *In re Tahl* (1969) 1 C3d 122, 132, 81 CR 577; *Mills v Municipal Court* (1973) 10 C3d 288, 301, 110 CR 329.

There is no specific formula for advising a defendant of his or her constitutional rights. *People v Wharton* (1991) 53 C3d 522, 582, 280 CR 631. All that is required is that the record must show by direct evidence, in light of the totality of the circumstances, that the defendant was fully aware of these rights. *People v Murillo* (1995) 39 CA4th 1298, 1304, 46 CR2d 403. However, it is best for the court to ensure that there is an adequate record for appeal and to protect the validity of a defendant's guilty plea by making its advisements, the defendant's understanding of his or her rights, and waivers as complete and explicit as possible. 39 CA4th at 1304. When a group advisement of rights is made by the court, the record must indicate that the defendant heard and understood the general statement and voluntarily, intelligently, and expressly waived each of the rights. *Mills v Municipal Court, supra*, 10 C3d at 307. A validly executed waiver form is a proper substitute for a verbal admonition by the court. *People v Panizzon* (1996) 13 C4th 68, 83, 51 CR2d 851.

- **JUDICIAL TIP:** Printed forms are commonly used for waiving rights and entering a plea of guilty or no contest. These forms generally require the placement of defendant's initials after the recitation of each right and defendant's signature at the bottom of the form. Once the defendant has completed the form, the judge should ask the defendant if he or she has read and understood the form. The form should provide a place for the judge to certify that the waiver is voluntary and intelligent. For written form, see §52.31.

2. [§52.27] Advisement of Direct Consequences of Plea

The record must demonstrate that the defendant understands the nature of the charges and the direct consequences of his or her plea or admission. *People v Walker* (1991) 54 C3d 1013, 1022, 1 CR2d 902, overruled on other grounds in 54 C4th at 177, 183. This requirement extends only to the primary and direct penal consequences of the imminent conviction. It is not constitutionally required, but is merely a judicially declared rule of criminal procedure. *People v Barella* (1999) 20 C4th 261, 266, 84 CR2d 248.

A consequence is “direct” if it has a definite, immediate, and largely automatic effect on the range of the defendant’s punishment. *People v Moore* (1998) 69 CA4th 626, 630, 81 CR2d 658. A consequence is “collateral” if it does not inexorably follow from a conviction of the offense involved in the plea, *e.g.*, the possibility of enhanced punishment in the event of a future conviction, the possibility of probation revocation in another case, or limitations on the ability to earn conduct and work credits while in prison. 69 CA4th at 630–633.

The following are primary and direct consequences of a plea:

(1) *Minimum and maximum sentences and fines. Bunnell v Superior Court* (1975) 13 C3d 592, 605, 119 CR 302. Generally, a misdemeanor is punishable by a county jail term of not more than six months and/or a fine not exceeding \$1000. Pen C §19. However, many misdemeanor offenses are punishable by county jail terms of up to one year and fines greater than \$1000. In no event can a sentence to county jail exceed one year, except on conviction of more than one offense when consecutive sentences have been imposed. Pen C §19.2. For a list of sentencing terms for common misdemeanors, see California Judges Benchguide 74: *Sentencing Guidelines for Common Misdemeanors and Infractions* (Cal CJER).

(2) *Restitution to crime victim for economic losses incurred as a result of the charged offense.* Pen C §1202.4(a); *People v Rowland* (1997) 51 CA4th 1745, 1752–1753, 60 CR2d 351. See California Judges Benchguide 83: *Restitution* (Cal CJER).

(3) *Restitution fine (minimum \$120 to maximum \$1000).* *Note:* The minimum fine increases to \$140 in 2013 and to \$150 in 2014. Pen C §1202.4(b); *People v Villalobos* (2012) 54 C4th 177, 186, 141 CR3d 491. See California Judges Benchguide 83: *Restitution* (Cal CJER). If the defendant receives a conditional sentence or a sentence that includes a period of probation, the court must impose an additional probation revocation fine in the same amount as that imposed under Pen C §1202.4(b). Pen C §1202.44. This additional fine must be suspended unless the defendant’s conditional sentence or probation is revoked. Pen C

§1202.44. The court must the fines under Pen C §1202.4 and Pen C §1202.44, unless there are clear and compelling reasons for not doing so. Pen C §§1202.4(c), 1202.44.

(4) *Registration with law enforcement authorities. Bunnell v Superior Court, supra*, 13 C3d at 605. Under Pen C §186.30 (gang-related crime offenders), Pen C §290 (sex offenders), Pen C §457.1 (arson offenders), or Health & S C §11590 (narcotics offenders), a misdemeanant may be required to register with the chief of police or sheriff in the city or county in which he or she resides. When advising of the sex registration requirement under Pen C §290, the court must state that such registration is a lifetime obligation. *People v Zaidi* (2007) 147 CA4th 1470, 1481-1486, 55 CR3d 566.

(5) *Revocation or suspension of driving privilege. People v Dakin* (1988) 200 CA3d 1026, 1033, 248 CR 206. The court or the California Department of Motor Vehicles may suspend or revoke the driving privilege of a defendant convicted of certain Vehicle Code offenses.

(6) *Effect on noncitizen's immigration status. Pen C §1016.5. The court must advise the defendant that if he or she is not a citizen, a conviction may result in deportation, exclusion from admission to the United States, or denial of naturalization. Pen C §1016.5(a). The court is required to warn the defendant of each of these three possible immigration consequences before the defendant enters a plea. People v Gontiz* (1997) 58 CA4th 1309, 1316-1319, 68 CR2d 786, disapproved on other grounds in 23 C4th 183, 200 (guilty plea vacated based on court's failure to warn defendant of possibility of exclusion). Although Pen C §1016.5 does not apply to United States citizens, the court must give the required advisement to all defendants and may not inquire about the defendant's legal status. Pen C §1016.5(d); *People v Aguilera* (1984) 162 CA3d 128, 133, 208 CR 418. A court is not required to give a Pen C §1016.5 advisement when a defendant submits a "slow plea" in which the defendant submits his or her case on stipulated facts. *People v Limones* (1991) 233 CA3d 338, 345, 284 CR 418 (Pen C §1016.5 only applicable to guilty and no-contest pleas).

(7) *If the defendant is a youthful offender (under age 21 when apprehended), possible commitment to the CDCR Division of Juvenile Justice. Welf & I C §§1731.5, 1766.*

(8) *If the defendant is a narcotics addict, or potential addict, possible commitment to the California Rehabilitation Center for treatment. See Welf & I C §3051. Bunnell v Superior Court, supra*, 13 C3d at 605.

3. [§52.28] Entry of Plea by Counsel

In misdemeanor cases, a plea may be made by counsel for an absent defendant. Pen C §§977(a)(1), 1429; *Mills v Municipal Court* (1973) 10 C3d 288, 305, 110 CR 329. A guilty plea entered through counsel is valid if accompanied by a written waiver form “drafted both to be understandable to the average layman and to require ‘personal participation’ by the defendant so as to insure that he actually read the form.” 10 C3d at 305. The waiver form should be signed by the defendant’s attorney attesting that he or she discussed the form with the defendant, explained its contents, and observed the defendant complete the form. The court may permit the defendant to enter a plea by video arraignment. Pen C §977(c). For discussion, see §52.3.

IV. SAMPLE FORMS

A. [§52.29] Script: Plea of Guilty or No Contest

(1) *Call the case:*

In the matter of the People of the State of California v _____, case number _____. Counsel, please state your appearances.

Are you [Mr./Ms.] [name of defendant]? What is your full true name and the date of your birth?

[Mr./Ms.] [name of defendant], if at any time during these proceedings there is anything that you do not understand or which confuses you, please stop me so that either the court or your attorney can clarify it or explain it to you.

You are accused of having committed the crime(s) of _____, [a] misdemeanor(s), on or about [date].

[Mr./Ms.] [name of defense attorney], do you waive further reading of the complaint? Is the defendant ready to plead at this time?

[Mr./Ms.] [name of defendant], your attorney has indicated that you wish to enter a plea of [guilty/no contest] [to Court ____]. Is that what you want to do?

(2) *Advisement of the nature of the charge(s):*

Do you understand the crime(s) charged against you? Do you have any questions about the charge(s)?

(3) *Advisement and waiver of rights:*

[Mr./Ms.] [name of defendant], before I take your plea and sentence you, you must also understand and give up certain constitutional and statutory rights.

a. You have the right to a speedy and public trial within 30 days if you are in custody and 45 days if you are not in custody.

b. You have the right to a trial by jury, or if both you and the prosecutor waive that right, you have the right to be tried by a judge.

c. At your trial, you have a right to see and hear the witnesses against you testify under oath and, through your attorney, to question those witnesses.

d. You have the right to remain silent and not incriminate yourself.

e. You have the right to present a defense, that is, to testify in your own behalf, to present evidence and witnesses, and to use the court's subpoena power to bring evidence and witnesses before the court for your defense.

By pleading [guilty/no contest] to these charges, you are giving up all these rights. In fact, you are incriminating yourself by pleading [guilty/no contest] to these charges. Do you understand that?

[Mr./Ms.] [name of defendant], have you discussed all these rights, including your right to a trial by jury, your right to confront and cross-examine witnesses, and your right against self-incrimination, with your attorney? Have you discussed your case and defense of your case with your attorney?

[Mr./Ms.] [name of defendant], do you understand each of these rights that I have explained to you? Do you have any questions?

With full knowledge and understanding of each of these rights, do you freely and voluntarily waive and give up all these rights?

Counsel, do you join in those waivers? Do the People join?

(4) *Consequences of plea:*

[Mr./Ms.] [name of defendant], before I take your plea, you must understand the potential consequences.

a. *Potential county jail term and fine:*

[If defendant subject to minimum mandatory jail time (e.g., Health & S C §11550):]

Do you understand that if you plead guilty to the charge(s), you will be confined in county jail for at least ____ [days] but no more than _____ [days/months] and pay a fine of up to \$_____? [See *Pen C* §§19, 19.2, 672.]

[All other defendants:]

Do you understand that if you plead guilty to the charge(s), the maximum punishment is _____ [days/months] in county jail and a fine of up to \$_____? [See *Pen C* §§19, 19.2, 672.]

b. Penalty assessments, fees and state surcharge:

In addition, should a fine be imposed, you will be required to pay penalty assessments, fees, and a state surcharge that will significantly increase the amount you must pay. [See *Pen C* §§1464, 1465.7, 1465.8; *Govt C* §§70372(a), 70373, 76000, 76000.5, 76104.6, 76104.7.]

c. Restitution fine and victim restitution: You will be ordered to pay a restitution fine of not less than \$120 nor more than \$1000. [Note: The minimum fine increases to \$140 in 2013 and to \$150 in 2014. See *Pen C* §1202.4(b).]

[Add if conditional sentence or a sentence that includes probation:]

The judge will impose an additional, identical restitution fine, but this fine will be suspended unless your conditional sentence or probation is revoked. If probation is revoked, the fine will be reinstated against you. [See *Pen C* §1202.44.]

[Add if crime with a victim:]

You will also be ordered to pay restitution directly to the victim(s) of your offense(s) in an amount determined by the court to fully reimburse the victim(s) for economic losses. [See *Pen C* §1202.4(a).]

d. Registration with law enforcement (Pen C §§186.30, 290, 457.1; Health & S C §11590). Add as appropriate:

You will be required to register as a [gang-related/sex/narcotics/arson] offender with the chief of police or sheriff in the city or county in which you reside. Registration as a sex offender is a lifelong requirement. Do you understand that?

e. Revocation or suspension of driving privileges (Veh C §§13200–13202.7, 13210, 13350–13352.6, 13357, 13361). Add as appropriate:

The [Court/Department of Motor Vehicles] [will/may] revoke or suspend your driver's license. Do you understand that?

f. *Vehicle forfeiture (Veh C §23596). Add as appropriate:*

If you are the registered owner of the vehicle involved in the offense, as a result of your plea, the vehicle may be declared a nuisance and ordered forfeited. Do you understand that?

g. *Immigration consequences (Pen C §1016.5(a)):*

If you are not a citizen of the United States, you should assume that your plea of [guilty/no contest] will result in your deportation from the United States, exclusion from admission to the United States, or denial of naturalization as a United States citizen. Do you understand that?

- JUDICIAL TIP: The court should give the Pen C §1016.5 advisement to all defendants because the court may not inquire into a defendant's legal status. See Pen C §1016.5(d); *People v Aguilera* (1984) 162 CA3d 128, 133, 208 CR 418.

(h) *Commitment to the CDCR Division of Juvenile Justice. Add as appropriate:*

How old are you?

[If defendant was under age 21 when apprehended,
add (Welf & I C §§1731.5, 1766).]

You could be sentenced to the Division of Juvenile Justice for ___ months [maximum county jail term]. Do you understand that?

(i) *Commitment to CRC (Welf & I C §§3050, 3052(a) (limits on CRC eligibility), 3201). Add as appropriate:*

Ultimately, if the judge before whom you appear for sentencing determines that you are a narcotics addict or in imminent danger of becoming one, he or she could commit you to the California Rehabilitation Center for treatment, and you could remain subject to its jurisdiction and control for up to ___ months [the maximum county jail term]. Do you understand that?

(5) *Factual basis (Pen C §1192.5):*

- JUDICIAL TIP: The court is not required to inquire as to whether there is a factual basis for a misdemeanor plea (*In re Gross* (1983) 33 C3d 561, 567–568, 189 CR 848), but it is recommended that the court do so. By satisfying itself that there is a factual basis, the court ensures the voluntariness of the plea, protects against the entry of a plea by an innocent defendant, and makes a record against appellate or collateral attacks on the plea. *People v Hoffard* (1995) 10 C4th 1170, 1183–1184, 43 CR2d 827

(approving of practice followed by many courts of determining factual basis for all pleas, but declining to impose a duty on courts). See also *People v Holmes* (2004) 32 C4th 432, 9 CR3d 678 (court provides guidelines on how to comply with Pen C §1192.5 and what constitutes a sufficient factual basis for a plea).

[Mr./Ms.] [*name of prosecutor*], please state the factual basis for the plea.

[Mr./Ms.] [*name of defense counsel*], do you accept the factual basis as stated?

(6) *Voluntariness of plea:*

Are you entering your plea of [*guilty/no contest*] freely and voluntarily? Has anyone threatened you in any way in order to get you to plead guilty?

Are you under any medications, or have you recently consumed any drugs or alcohol?

[*If straight plea:*]

Has anyone made any promises or representations to you of lesser sentence, probation, or any other advantage of any kind to get you to plead [*guilty/no contest*]?

[*If negotiated plea:*]

The prosecutor has indicated that if you plead [*guilty/no contest*] [*to Count _____*], [*he/she*] will [*describe terms of negotiated plea*] and your attorney has concurred in the terms of the plea.

Other than what has been stated here in open court, has anyone made any other promises or representations to you of lesser sentence, probation, or any other advantage of any kind to get you to plead [*guilty/no contest*]?

Before entering your plea, do you have any questions about what you are doing today?

Have you talked about this case with your attorney? Do you believe that you have had enough time to talk with [*him/her*] about your case?

[Mr./Ms.] [*name of defense attorney*], do you believe that you have had sufficient time to discuss this case with your client? Have you discussed with your client [*his/her*] rights, defenses, and the possible consequences of a plea of [*guilty/no contest*]? Are you satisfied that your client understands [*his/her*] rights?

(7) *Taking the plea:*

[Mr./Ms.] [name of defendant], you are charged in the complaint [in Count _____] with a misdemeanor violation of section _____ of the _____ Code. To that charge, what is your plea?

[If no-contest plea (Pen C §1016(3)):]

For these purposes, a plea of no contest is the same as a plea of guilty. If you plead no contest, I will find you guilty on the basis of your plea and you will be sentenced as if you pleaded guilty. Do you still wish to plead no contest?

(8) *Findings and acceptance of plea:*

The court finds that the defendant has expressly, knowingly, understandingly, and intelligently waived [his/her] statutory and constitutional rights. The court further finds that the plea was freely and voluntarily made with an understanding of the nature of the charges pending as well as the consequences of the plea. The court finds there is a factual basis for the plea. The court accepts the plea and finds the defendant guilty.

B. [§52.30] Script: Proposition 36 Conditional Plea of Guilty or No Contest

BULLETIN: A legislative measure (Stats 2006, ch 63 (SB 1137)) amending the Proposition 36 drug treatment and probation provisions was found invalid in its entirety because certain terms of SB 1137 were inconsistent with the purposes of Proposition 36, and the measure reflected a legislative intent that its provisions would not be severable. *Gardner v Schwarzenegger* (2009) 178 CA4th 1366, 101 CR3d 229.

Note: The following script is to be used when the court takes a plea of guilty or no contest from a defendant charged with a drug possession offense prior to conducting an investigation of the defendant's eligibility for sentencing under Proposition 36 (Pen C §§1210 et seq). The plea is conditioned on a finding of eligibility. If the defendant is found ineligible or the laboratory analysis proves negative for the presence of a controlled substance, the defendant may withdraw the plea. The taking of a conditional plea is but one way to proceed when presented with a potential Proposition 36 case. Some courts prefer to continue the case and have the eligibility investigation conducted before taking a plea.

(1) *Call the case:*

In the matter of the People of the State of California v _____, case number _____. Counsel, please state your appearances.

(2) *Description of conditional plea.*

[Mr./Ms.] [name of defendant], after discussing the matter with counsel and reviewing the available documentation, it appears to the court that you are eligible for sentencing under Penal Code §1210.1. Before that determination is finalized, however, you must plead [guilty/no contest] to the agreed on charge(s), and a criminal records review must be conducted by Pretrial Services.

At the next court hearing, if it is determined from the criminal records review that you are not eligible for sentencing under Penal Code §1210.1, you will have the right to withdraw your plea of [guilty/no contest] and resume defense of the charges set forth in the complaint. Also at the next court hearing, if it is determined from a laboratory analysis that the substance you possessed or that was in your urine or blood was not a controlled substance or was not in sufficient quantity to be analyzed, you will also have the right to withdraw your plea of [guilty/no contest] and resume defense of the charges set forth in the complaint, and those charges may be dismissed. But if it is determined that you are eligible and the laboratory analysis is positive for a controlled substance, the court will sentence you in accordance with Penal Code §1210.1.

(3) *Description of treatment/probation terms.*

The court will impose drug treatment as a condition of probation in a manner and at a level either the court or the Probation Department deems appropriate based on a risk assessment performed by the Probation Department and a treatment assessment performed by the [name of assessment provider]. The treatment may last up to twelve months and may consist of outpatient treatment, in-patient residential treatment, narcotic replacement therapy, drug education or prevention courses, or a combination thereof. The court may also require participation in vocational training, family counseling, literacy training, and community service as a further condition of probation. The court may alter or intensify the treatment as may be appropriate. The treatment ordered by the court may be followed by up to six months of additional aftercare as the court or the Probation Department finds appropriate. The court may require you to contribute to the cost of your treatment to the extent that you are able to do so.

You may also be required to submit to random drug testing, to refrain from the use of alcohol or illegal drugs, to refrain from associating with known drug users and from being present at any place where illegal drugs are used, and any other appropriate condition of probation.

(4) *Probation revocation and the possibility of future incarceration.*

Although Penal Code §1210.1 prohibits imposition of incarceration as a condition of probation, you may be sentenced to county jail for up to [the maximum penalty] __ months if you fail to complete the requirements of your drug treatment program or if you otherwise violate the terms of your probation.

(5) *Dismissal of charges.*

You may petition the court for dismissal of the charges on successful completion of the court-ordered drug treatment, including aftercare. If the court finds that you successfully completed drug treatment and substantially complied with the conditions of probation, the conviction will be set aside and the case dismissed. In that event, you will be released from all penalties and disabilities under California law resulting from the conviction except that you will not be permitted to own, possess, or have in your custody or control any concealable firearm, and will be subject to prosecution for such acts.

In addition, you may deny, in response to any question concerning your prior criminal record, that you were arrested for or convicted of the offense except that you must disclose the arrest and conviction in any questionnaire or application for public office, for a position as a peace officer, for licensure by any state or local agency, for contracting with the California State Lottery, or for purposes of serving on a jury.

(6) *Query defendant regarding conditional plea.*

[Mr./Ms.] [name of defendant], your attorney has told the court that you wish to enter a conditional plea of [guilty/no contest] so that your case can be referred to Pretrial Services for criminal records review, and to the Probation Department for a risk assessment and to the [name of assessment provider] for a treatment assessment. Do you have any questions about the conditional plea as I have described it?

[Defendant responds.]

[Mr./Ms.] [name of defendant] do you wish to proceed with the conditional plea?

[If defendant responds, "no," continue with normal proceedings. If defendant responds, "yes," continue.]

(7) *Waiver of constitutional rights.* Inform defendant of his or her constitutional rights and obtain waiver of those rights. Use script in §52.29(3).

(8) *Direct consequences of plea.* Advise the defendant of the direct consequences of the plea, in addition to the drug treatment program, e.g.,

payment of restitution, registration with law enforcement. Use script in §52.29(4).

(9) *Arbuckle waiver* (*People v Arbuckle* (1978) 22 C3d 749, 757, 150 CR 778) *when defendant will be sentenced by a different judge:*

[Mr./Ms.] [name of defendant], you have the right to be sentenced by the judge who takes your plea. Do you waive that right?

Does defense counsel join?

(10) *Factual basis*. Determine factual basis for the plea. See §52.29(5).

(11) *Taking of plea*.

[Mr./Ms.] [name of defendant], you are charged in the complaint [in Count ____] with a misdemeanor violation of section ____ of the ____ Code. To that charge, what is your plea?

[If no-contest plea (Pen C §1016(3)):]

For these purposes, a plea of no contest is the same as a plea of guilty. If you plead no contest, I will find you guilty on the basis of your plea and you will be sentenced as if you pleaded guilty. Do you still wish to plead no contest?

(12) *Findings and acceptance of plea*.

The court finds that the defendant has expressly, knowingly, and intelligently waived [his/her] constitutional rights. The court further finds that the defendant has freely and voluntarily entered a conditional plea of [guilty/no contest] with an understanding of the consequences of the plea. The court finds that there is a factual basis for the plea. It is ordered that the defendant's conditional plea of [guilty/no contest] and waiver of constitutional rights be accepted.

(13) *Probation referral; setting time for pronouncement of judgment*.

[Mr./Ms.] [name of defendant], you have a right to a sentencing hearing within five days. Do you waive this right and agree to sentencing on ____ [date within 20 judicial days] so that you can be evaluated for sentencing and appropriate treatment under Penal Code §1210.1?

[Defendant responds.]

Pronouncement of judgment and sentencing is set for [date] at ____ .m. in this Department (*within 20 judicial days*). The case is referred to Pretrial Services for a criminal records review, to the Probation Department for a risk assessment, and to [name of assessment provider] for a treatment assessment—all returnable on that date. [Mr./Ms.] [name

of defendant], you are ordered to report within 48 hours to Pretrial Services, the Probation Department, and [*name of assessment provider*] at [*address*].

C. [§52.31] Written Form: Plea of Guilty or No Contest

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF _____**

PEOPLE V _____ CASE NUMBER _____

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

INSTRUCTIONS

Fill out this form if you wish to plead guilty or no contest to the charges against you. Initial/complete each applicable item only if you understand it, and sign and date the form. If you have any questions about your case or the information on this form, ask your attorney, if you have one, or the judge.

RIGHT TO AN ATTORNEY

1. I understand that I have the right to be represented by an attorney throughout the proceedings. 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 asked to pay all or part of the cost of that attorney, if I can afford to. 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. 1. _____

1a. I give up my right to an attorney, and I choose to represent myself. (Does not apply if you have an attorney.) 1a. _____

NATURE OF THE CHARGES

2. I understand that I am **charged** with the following offense(s):

_____ 2. _____

3. [If applicable] I understand that I am charged with having the following **prior conviction(s)**: _____
_____ 3. _____

4. [If applicable] I understand that I am also charged with violating the **probation order** in the following case(s): _____

- _____ 4. _____
5. I understand the charge(s) against me, and the possible pleas and defenses. 5. _____

CONSTITUTIONAL RIGHTS AND WAIVER OF RIGHTS

6. RIGHT TO JURY TRIAL: I understand that I have a right to a speedy, public jury trial. At the trial, I would be presumed innocent, and I could not be convicted unless 12 impartial jurors were convinced of my guilt beyond a reasonable doubt. **I give up this right.** 6. _____
7. RIGHT TO CONFRONT WITNESSES. I understand that I have the right to confront and cross-examine all witnesses testifying against me. **I give up this right.** 7. _____
8. RIGHT AGAINST SELF-INCRIMINATION. I understand that I have the right to remain silent and not incriminate myself, and the right to testify in my own behalf. I understand that by pleading guilty or no contest, or admitting prior convictions or probation violations, I am incriminating myself. **I give up these rights.** 8. _____
9. RIGHT TO PRODUCE EVIDENCE. I understand that I have the right to present evidence and witnesses in my own behalf, and to have the Court issue subpoenas to bring into Court all evidence and witnesses favorable to me, at no cost to me. **I give up these rights.** 9. _____

RIGHTS ON CHARGES OF PRIOR CONVICTION(S) AND PROBATION VIOLATION(S)

10. [*If applicable*] I understand that I have the right to an attorney, the right to a jury trial, the right to confront witnesses, the right against self-incrimination, the right to produce evidence for all of 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. **I give up these rights.** 10. _____

E. CONSEQUENCES OF PLEA OF GUILTY OR NO CONTEST

11. I understand that the court may sentence me to serve up to _____ [days/months] in county jail. 11. _____
12. I understand that the court may impose a maximum fine of \$_____. 12. _____

- 13. I understand that in addition to any fine imposed, the court will add assessments that will substantially increase the amount I must pay. 13. _____
- 14. I understand that I will be ordered to pay a restitution fine of no less than \$120 and up to \$1000. If I am placed on probation, the court will impose an additional probation revocation fine in the same amount that will be collected only if my probation is revoked. 14. _____
- 15. I understand that I must pay full restitution to all victims for any economic losses suffered as a result of the crime(s). 15. _____
- 16. I understand that if I am not a citizen of the United States, a 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 the appropriate consulate may be informed of my conviction. 16. _____
- 17. I understand that a plea of no contest will have exactly the same effect in this case as a plea of guilty, but it cannot be used against me in a civil lawsuit unless the offense is punishable as a felony. 17. _____
- 18. I understand that any plea entered in this case may be grounds for violating probation or parole that has previously been granted to me in any other case. 18. _____
- 19. I understand that other possible consequences of my plea(s) include: _____

 _____ 19. _____

F. PLEA(S)

- 20. I hereby freely and voluntarily plead _____
 (guilty or no contest)
 to the following: _____
 (list charges) 20. _____
- 21. *If applicable* – I also freely and voluntarily admit the prior conviction(s) listed on this form. I understand that this admission will increase the penalties that are imposed on me. 21. _____
- 22. *If applicable* – I also 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). 22. _____

23. I understand that I may not be sentenced earlier than 6 hours, or later than 5 days after my plea. I give up this right and agree to be sentenced at this time.

23. _____

DATE: _____ SIGNED: _____
Defendant's Signature

ATTORNEY'S STATEMENT

I am the attorney of record for the defendant. I have reviewed the form 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 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 the defendant's decision to waive his or her constitutional rights.

DATE: _____ SIGNED: _____
Attorney for Defendant

INTERPRETER'S STATEMENT (IF APPLICABLE)

I, _____, having been duly sworn, truly translated this form to the defendant in the _____ language. The defendant indicated that (s)he understood the contents of the form, and (s)he then initialed the form.

Language: Spanish Other (specify)

DATE: _____ SIGNED: _____
Court Interpreter

COURT'S FINDINGS AND ORDER

The Court, having reviewed this form and having questioned the defendant concerning the defendant's constitutional rights and the defendant's admission of prior conviction(s) and probation violation(s), if any, finds the defendant has

expressly, knowingly, understandingly, and intelligently waived his or her constitutional rights. The Court finds that the defendant's plea(s) and admission(s) are freely and voluntarily made with an understanding of the nature and consequences thereof, and that there is a factual basis for the plea(s). The Court accepts the defendant's plea(s), the defendant's admission of the prior conviction(s) and probation violation(s), if any, and the defendant is convicted on his or her plea(s).

The Court orders this form filed and incorporated in the docket by reference as though fully set forth therein.

DATE: _____ **SIGNED:** _____
Judge of the Superior Court

D. [§52.32] Written Form: Advisement and Waiver of Right to Counsel

SUPERIOR COURT OF CALIFORNIA, COUNTY OF	<i>Reserved for Clerk's File Stamp</i>	
PLAINTIFF: PEOPLE OF THE STATE OF CALIFORNIA		
DEFENDANT:		
ADVISEMENT AND WAIVER OF RIGHT TO COUNSEL (Faretta Waiver)	CASE NUMBER:	DEPT:

Instructions:

Fill out this form if you wish to act as your own attorney (*in propria persona* or “pro per”). Initial the box for each applicable item only if you understand and agree with it, and sign and date the form on page 4. If you have any questions about anything on this form, ask your attorney, if you have one, or the judge.

CONSTITUTIONAL RIGHTS

Initials

- | | |
|--|--------------------------|
| 1. I am the defendant in the above-entitled case, and I certify to the Court that I can read and write. I understand that my constitutional rights include the following: | <input type="checkbox"/> |
| A. Right to an Attorney — I understand that I have the right to be represented by an attorney at all stages of the proceedings and, if I cannot afford to hire an attorney, one will be appointed for me by the Court. | <input type="checkbox"/> |
| B. Right to a Speedy Trial and Public Jury Trial — I understand that I have a right to a speedy trial and a public trial by a jury of twelve citizens. | <input type="checkbox"/> |
| C. Right to Subpoena Witnesses and Records — I understand that I have the right to the reasonable use of the subpoena power of the Court to subpoena any witnesses or any records that I may need in my defense. | <input type="checkbox"/> |
| D. Right to Confront And Cross-Examine Witnesses — I understand that I have the right to confront in open court all witnesses who will be called to testify against me, and I have the right to cross-examine those witnesses at the time of trial. | <input type="checkbox"/> |
| E. Right Against Self-Incrimination — I understand that I have the right to testify at my trial, but that I cannot be compelled to testify at the trial unless I so desire. | <input type="checkbox"/> |
| F. Right to be Released on Bail — I understand that I may have the right to be released from jail on reasonable bail pending the trial. | <input type="checkbox"/> |
| G. Right to Self-Representation — I understand that I have a right to act as my own attorney and may waive my right to assistance of an attorney. I further understand that if I am permitted to represent myself, I will have to conduct my own defense without the assistance of an attorney. | <input type="checkbox"/> |

BACKGROUND

2. In support of my petition to proceed in propria persona (also referred to as “pro per”), I offer the Court the following biographical information:

A. Age _____ Year of Birth: _____

B. Education:

(1) High School Attended: _____

(2) High School Graduate: Yes No

(3) Additional Formal Education (if any):

(4) Legal Education (if any):

C. Employment Experience:

D. I have previously acted as my own attorney in the following criminal matters:

Case Court Year Result

Case Court Year Result

DANGERS AND DISADVANTAGES TO SELF-REPRESENTATION

Initials

3. I understand there are many dangers and disadvantages in representing myself. Among those dangers and disadvantages of not having an attorney are the following:

A. I understand that if I am permitted to represent myself it will be necessary for me, without the assistance of an attorney, to follow all the rules of criminal law, criminal procedure, the law of evidence, and rules of court.

B. I understand the case against me will be handled by a prosecutor who is an experienced trial attorney, and that I will not be entitled to special consideration or assistance by the prosecutor during the course of the trial.

C. I understand that if I am permitted to represent myself, it will be necessary for me without the assistance of an attorney, to conduct my own trial consisting of, but not limited to: making pretrial motions; selecting a jury; making an opening statement; cross-examining the witnesses for the prosecution; subpoenaing and presenting my own witnesses; making appropriate objections and motions during the course of the trial; preparing and presenting proposed jury instructions to the Court; making the final argument; and in the event of a conviction, making appropriate motions after trial and representing myself at the time of the probation and sentencing hearing.

D. I understand that I cannot and will not receive any special consideration or assistance from the Court. I further understand that the Court is not permitted to and will not answer any questions I have concerning how I should proceed, what law might apply, or the correct procedure.

E. I understand that if I wish to ask the Court for funds to be used in my defense, I will have to show good cause

- F. I understand that if I ask for any additional money over the initial amount granted by the Court, I will be required to keep and show the Court receipts for anything I have purchased with the money granted to me.
- G. I understand that if I am in jail, it will be difficult for me to contact witnesses and investigate my case. I understand that I will have limited access to a telephone, which will make preparations for trial more difficult, and that I will be provided no more access to legal research or legal information than any other inmate who acts as his or her attorney, and that access is limited.
- H. I understand that no continuance of the trial will be allowed without a showing of good cause, and that such requests made just before trial will most likely be denied.
- I. I understand that depending on the stage of my case, if I change my mind and request an attorney to handle my case, the Court may deny this request and I may have to proceed with trial without an attorney.
- J. I understand that in conducting the trial, I may be limited in my movements in the courtroom. All documents, for example, will be handed to witnesses when necessary through the bailiff, I may be required to remain in my seat at counsel table and may not have free movement in the courtroom.
- K. I understand that I must not act disrespectfully in court. I understand that the Judge may terminate my right to act as my own attorney in the event that I engage in serious misconduct or obstruct the conduct and progress of the trial. I understand that if my right to act as my own attorney is terminated, I may have to be represented by an attorney, appointed by the Judge, who will then take over the case at whatever stage the case may be in.
- L. I understand that if at some point an appointed attorney does take over my case, that attorney may be in a disadvantaged position and that such a disadvantage will not be considered an issue on appeal.
- M. I understand that misconduct occurring outside of court may result in restriction or termination of my right to act as my own attorney. I also understand that my right to act as my own attorney will not shield me from disciplinary actions within the jail, and that I will be subject to the same disciplinary measures as all other inmates for misconduct occurring in the jail.
- N. I understand that a defendant who is represented by an attorney before being convicted may complain as part of a timely appeal that the attorney's assistance was ineffective. I understand that by acting as my own attorney, I am giving up any right to claim on appeal that I had ineffective assistance of counsel.

CHARGES AND CONSEQUENCES

4. I understand that I am giving up having an attorney explain to me what crime(s) I am charged with, and any possible legal defenses I might have to those charges.
5. I understand that I am giving up having an attorney explain to me which charges require proof of general criminal intent, which charges require proof of specific intent or mental state, and which state of mind may apply to any defenses I may have.
6. I understand that I am giving up having an attorney determine what facts must be proved before I can be found guilty
7. I understand that I am giving up having an attorney determine, if I am convicted, what post-trial motions and sentencing options I may have, and to present these motions and options to the Court.

COURT’S ADVICE AND RECOMMENDATION Initials

8. I understand that it is the advice and recommendation of this Court that I do not act as my own attorney and that I accept a court-appointed attorney. I understand that if I accept a court-appointed attorney, a trial attorney will be assigned to defend me. I understand that the attorney would be able to investigate my case, file pretrial motions, conduct the trial, and generally advise me on what to do.

9. I understand that this written request to act as my own attorney will be filed with and become part of the court case file. I further understand that on any appeal that may be taken from a conviction, or on the filing of a petition for an extraordinary writ, this request will be forwarded to any court of appeal and will be considered by that court in determining whether I knowingly and intelligently waived my right to an attorney.

10. I understand all that I have read and understood all that the Court has told me. Having in mind all that I have been advised and all of the dangers and disadvantages of acting as my own attorney, it is still my request that I act as my own attorney.

I hereby certify that I have read, understood and considered all of the above warnings included in this petition, and I still want to act as my own attorney. I freely and voluntarily give up my right to have an attorney represent me.

Dated: _____ Signed: _____
Defendant’s Signature

INTERPRETER’S STATEMENT (If applicable)

I, having been duly sworn or having a written oath on file, certify that I truly translated this Advisement and Waiver of Right to Counsel (*Faretta* waiver) form to the defendant in the language indicated 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) _____

Dated: _____ Signed: _____
Court Interpreter

Type or Print Name

The court finds that the defendant has been advise of his or her constitutional rights and the dangers and disadvantages of self-representation. The defendant has made a voluntary, knowing, and intelligent waiver of the right to counsel. The court grants the defendant’s request for self-representation.

Dated: _____ Signed: _____
Judge of the Superior Court

V. [§52.33] ADDITIONAL REFERENCES

California Criminal Law Procedure and Practice, chaps 3, 5-6, 26, 48 (Cal CEB 2012).

- 4 Witkin & Epstein, California Criminal Law, *Pretrial Proceedings*, §§87-139 (bail and OR), 252-258 (arraignment), 285-338 (pleas), 385-399 (deferred entry of judgment) (4th ed 2012).

Table of Statutes

CALIFORNIA

CONSTITUTION

Article I

12	52.5
14	52.4
14–15	52.6
15	52.5–52.6
16	52.5

EVIDENCE CODE

730	52.11
930	52.5
940	52.5

FAMILY CODE

6211	52.3
------	------

GOVERNMENT CODE

70372(a)	52.29
70373	52.29
76000	52.29
76000.5	52.29
76104.6	52.29
76104.7	52.29

HEALTH AND SAFETY CODE

11350–11392	52.19
11550	52.29
11590	52.27, 52.29

PENAL CODE

19	52.27, 52.29
19.2	52.27, 52.29
136.2	52.3
186.30	52.27, 52.29
191.5(b)	52.3
243(e)(1)	52.20
272	52.16
273.6	52.3
290	52.27, 52.29
457.1	52.27, 52.29
646.9	52.20
672	52.29
686	52.5
825	52.20

858	1000.1(b)
52.5	52.2, 52.15
977(a)(1)	1000.2
52.3, 52.28	52.15
977(a)(2)	1000.3
52.3	52.15-52.16
977(a)(3)	1000.5
52.3	52.16
977(c)	1001.20-1001.34
52.3, 52.28	52.16
978.5	1001.50
52.2	52.16
987(a)	1001.50-1001.55
52.5-52.6	52.16
987(c)	1001.53
52.7	52.16
987.8(f)	1001.60-1001.67
52.8	52.16
988	1001.70-1001.75
52.2, 52.4, 52.22	52.16
989	1016
52.2, 52.4	52.22
990	1016(3)
52.2, 52.22	52.22, 52.29-52.30
991	1016.5
52.23	52.27, 52.29
991(a)	1016.5(a)
52.23	52.27, 52.29
991(b)	1016.5(d)
52.23	52.27, 52.29
991(c)	1024
52.23	52.22
991(d)	1025(a)
52.23	52.22
1000-1000.4	1025(e)
52.15	52.22
1000(a)	1192.5
52.15	52.29
1000(b)	1202.4
52.15	52.27
1000.1	1202.4(a)
52.14-52.16	52.27, 52.29

1202.4(b)	1271
52.27, 52.29	52.5
1202.4(c)	1275(a)
52.27	52.19
1202.44	1275(b)
52.27, 52.29	52.19
1210	1289
52.2	52.19
1210 et seq	1318
52.30	52.18
1210-1210.1	1318(a)(1)-(3)
52.2, 52.17	52.18
1210(a)	1318(a)(4)-(5)
52.17	52.18
1210(b)	1367
52.17	52.13
1210.1	1367.1
52.17, 52.30	52.13
1210.1(a)	1368
52.17	52.2, 52.13
1210.1(b)	1368-1370.01
52.17	52.13
1210.1(c)(3)	1368(a)
52.17	52.13
1269c	1369
52.20-52.21	52.13
1270(a)	1370(a)(1)
52.18, 52.21	52.13
1270.1	1382
52.2, 52.20	52.25
1270.1(a)	1382(a)(3)
52.20	52.5, 52.25
1270.1(a)(2)-(3)	1382(c)
52.20	52.5, 52.25
1270.1(b)	1429
52.20	52.3, 52.28
1270.1(c)	1449
52.20	52.25
1270.1(d)	1458
52.20	52.5, 52.19
1270.1(e)	1464
52.20	52.29

1465.7	1766
52.29	52.27, 52.29
1465.8	3050
52.29	52.29
1538.5	3051
52.25	52.27
4011	3052(a)
52.13	52.29
	3201
	52.29
VEHICLE CODE	23596
13200-13202.7	52.29
52.29	
13210	
52.29	SESSION LAWS
13350-13352.6	2006, ch 63
52.29	52.17, 52.30
13357	
52.29	CALIFORNIA RULES OF
13361	COURT
52.29	4.100(1)
23103	52.25
52.3	
23103.5	Standards of Judicial
52.3	Administration
23152	2.10
52.3	52.4
23153	
52.3	UNITED STATES
WELFARE AND	CONSTITUTION
INSTITUTIONS CODE	Amend VI
1731.5	52.6, 52.9
52.27, 52.29	

Table of Cases

- Aguilera, *People v* (1984) 162
CA3d 128, 208 CR 418:
§§52.27, 52.29
- American Bankers Ins. Co.,
People v (1987) 191 CA3d
742, 236 CR 501: §52.3
- Amor, *People v* (1974) 12 C3d
20, 114 CR 765: §52.8
- Arbuckle, *People v* (1978) 22
C3d 749, 150 CR 778: §52.30
- Barbarick, *People v* (1985) 168
CA3d 731, 214 CR 322:
§52.21
- Barella, *People v* (1999) 20 C4th
261, 84 CR2d 248: §52.27
- Boykin v Alabama (1969) 395
US 238, 89 S Ct 1709, 23 L Ed
2d 274: §52.26
- Bunnell v Superior Court (1975)
13 C3d 592, 119 CR 302:
§52.27
- Carreon, *People v* (1984) 151
CA3d 559, 198 CR 843: §52.4
- County of Riverside v
McLaughlin (1991) 500 US
44, 111 S Ct 1661, 114 L Ed
2d 49: §52.24
- Dakin, *People v* (1988) 200
CA3d 1026, 248 CR 206:
§52.27
- Danks, *People v* (2004) 32 C4th
269, 8 CR3d 767: §52.10
- Dant v Superior Court (1998) 61
CA4th 380, 71 CR2d 546:
§52.20
- Faretta v California (1975) 422
US 806, 95 S Ct 2525, 45 L Ed
2d 562: §§52.2, 52.9
- Frye, *People v* (1998) 18 C4th
894, 77 CR2d 25: §52.6
- Fulk, *People v* (1974) 39 CA3d
851, 114 CR 567: §52.16
- Garcia, *People v* (2000) 78
CA4th 1422, 93 CR2d 796:
§52.9
- Gardner v Schwarzenegger
(2009) 178 CA4th 1366, 101
CR3d 229: §§52.17, 52.30,
52.33
- Garza, *People v* (1983) 142
CA3d 131, 190 CR 824: §52.5
- Godinez v Moran (1993) 509 US
389, 113 S Ct 2680, 125 L Ed
2d 321: §§52.9, 52.11
- Gontiz, *People v* (1997) 58
CA4th 1309, 68 CR2d 786:
§52.27
- Gross, *In re* (1983) 33 C3d 561,
189 CR 848: §52.29
- Harvey v Superior Court (1974)
43 CA3d 66, 117 CR 383:
§52.16
- Hoffard, *People v* (1995) 10 C4th
1170, 43 CR2d 827: §52.29
- Holmes, *People v* (2004) 32 C4th
432, 9 CR3d 678: §52.29
- In re* _____. *See* name of
party.
- Indiana v Edwards (2008) 554
US 164, 128 S Ct 2379, 171 L
Ed 2d 345: §52.11
- Jenkins, *People v* (2000) 22 C4th
900, 95 CR2d 377: §52.9,
52.12
- Johnson, *In re* (1965) 62 C2d
325, 42 CR 228: §52.5-52.6
- Johnson, *People v* (2012) 53
C4th 519, 136 CR3d 54:
§52.11

- Limones, *People v* (1991) 233
CA3d 338, 284 CR 418:
§52.27
- Marshall, *People v* (1997) 15
C4th 1, 61 CR2d 84: §52.6,
52.10
- Martinsen, *People v* (1987) 193
CA3d 843, 238 CR 530:
§52.14
- McIntosh v Municipal Court
(1981) 124 CA3d 1083, 177
CR 683: §52.21
- Mills v Municipal Court (1973)
10 C3d 288, 110 CR 329:
§§52.26, 52.28
- Moore, *People v* (1998) 69
CA4th 626, 81 CR2d 658:
§52.27
- Mroczko, *People v* (1983) 35
C3d 86, 197 CR 52: §52.6
- Murillo, *People v* (1995) 39
CA4th 1298, 46 CR2d 403:
§52.26
- Noriega, *People v* (1997) 59
CA4th 311, 69 CR2d 127:
§52.12
- Panizzon, *People v* (1996) 13
C4th 68, 51 CR2d 851:
§§52.26, 52.33
- Pederson v Superior Court
(2003) 105 CA4th 931, 130
CR2d 289: §52.13
- People v* _____. *See* name of
party.
- Prince, *People v* (1976) 55 CA3d
Supp 19, 127 CR 296: §52.5
- Riverside, County of v
McLaughlin (1991) 500 US
44, 111 S Ct 1661, 114 L Ed
2d 49: §52.24
- Robinson, *People v* (1997) 56
CA4th 363, 65 CR2d 406:
§52.11
- Rowland, *People v* (1997) 51
CA4th 1745, 60 CR2d 351:
§52.27
- Simmons v Superior Court
(1988) 203 CA3d 71, 249 CR
721: §52.3
- Smiley, *In re* (1967) 66 C2d 606,
58 CR 579: §52.5, 52.25
- Smith, *People v* (2000) 81 CA4th
630, 96 CR2d 856: §52.8
- Sturiale, *People v* (2000) 82
CA4th 1308, 98 CR2d 865:
§52.15
- Sylvestry, *People v* (1980) 112
CA3d Supp 1, 169 CR 575:
§52.21
- Tahl, *In re* (1969) 1 C3d 122, 81
CR 577: §52.26
- Valdez, *People v* (2004) 32 C4th
73, 8 CR3d 271: §52.10
- Van Atta v Scott (1980) 27 C3d
424, 166 CR 149: §52.18
- Villalobos, *People v* (2012) 54
C4th 177, 141 CR3d 491:
§52.27
- Walker, *People v* (1991) 54 C3d
1013, 1 CR2d 902: §52.27
- Walters, *In re* (1975) 15 C3d
738, 126 CR 239: §52.23
- Weiner, *In re* (1995) 32 CA4th
441, 38 CR2d 172: §52.5
- Welch, *People v* (1999) 20 C4th
701, 85 CR2d 203: §§52.10-
52.11
- Wharton, *People v* (1991) 53
C3d 522, 280 CR 631: §52.26
- York, *In re* (1995) 9 C4th 1133,
40 CR2d 308: §52.21
- Zaidi, *People v* (2007) 147
CA4th 1470, 55 CR3d 566:
§52.27