

I Have Read,
Understand,
and Agree.

Factual Basis Stipulation and Waivers (Aggravating and Mitigating Factors)



4. I stipulate the court can take a factual basis for my plea from the following documents, which will be summarized in the probation report:

- Probable cause declaration
- Police reports
- Other (specify below)

- Stipulated facts (specify below)
- Preliminary hearing transcript

Other/Stipulated facts:



4(a). If I believe the summary in the probation report is incomplete or incorrect, I may submit additional portions from the above documents.



4(b). I understand that the court cannot impose a sentence exceeding the middle term unless there are circumstances in aggravation justifying a greater term. I understand that I have the right to a jury trial or court trial where any facts underlying an aggravating circumstance must be proven beyond a reasonable doubt.



4(c). I give up this right and agree that the judge may find aggravating factors based on the documents described above, and the court may sentence me to the lower, middle, or upper term.



4(d). I also understand that I may submit evidence of mitigating factors, which must be proven by a preponderance of the evidence and may result in a lesser sentence.



5. I understand that a plea of no contest is the same as a plea of guilty in the criminal case and for all purposes has the same consequence as a plea of guilty.



6. I am pleading guilty because, in truth and in fact, I am guilty.



7. I have **not been induced** to enter the above plea(s) [and admission(s)] by any promise or representation of any kind, except (briefly state any negotiated settlement with the District Attorney):



8. I understand that my "county lid" or "no immediate State/County Prison" (NISP) agreement is conditioned upon my obeying all laws, making an appointment to see a probation officer, keeping that appointment, and appearing in court on the date and time set by the Court for the hearing on my application for probation. I understand that should I fail to do any of these things, without an acceptable excuse, that my NISP agreement will be lost and my plea(s) [and admission(s)] of guilty/no contest would remain in effect without the NISP agreement. I understand that a NISP agreement does not preclude the Court from ordering a diagnostic evaluation of not more than 90 days pursuant to Penal Code section 1203.03, which would be conducted by the California Department of Corrections and Rehabilitation at a corrections facility. I further understand that if the sentencing judge honors the NISP agreement, and I am placed on probation, I could be thereafter sentenced to prison if I violate the terms of my probation.

NISP will be granted only if the sentencing judge finds this to be an unusual case (Prison Presumptive)

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RECITAL AND WAIVER OF CONSTITUTIONAL AND APPELLATE RIGHTS

- 9. I understand that as to any and all charged offense(s) and any and all prior conviction(s)/enhancement(s) alleged against me in this case, I have all the constitutional rights listed below.
- 10. I understand that I have the right to be represented by a lawyer at all stages of the proceedings, including this one. I can hire my own lawyer, or the Court will appoint a lawyer for me if I cannot afford one.

I UNDERSTAND THAT I HAVE THE FOLLOWING CONSTITUTIONAL RIGHTS, WHICH I NOW GIVE UP IN ORDER TO PLEAD GUILTY OR NO CONTEST:

I Understand This Right I Give Up This Right

- | | | |
|----------------------------|--------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| → <input type="checkbox"/> | <input type="checkbox"/> | 11. The right to a preliminary hearing in this court. |
| → <input type="checkbox"/> | <input type="checkbox"/> | 12. The right to be tried by a jury in a speedy public trial. |
| → <input type="checkbox"/> | <input type="checkbox"/> | 13. The right to confront and cross-examine all witnesses against me, whether at a preliminary hearing or a trial. |
| → <input type="checkbox"/> | <input type="checkbox"/> | 14. The right to present evidence and to have witnesses subpoenaed to testify on my behalf at no cost to me, whether at a preliminary hearing or a trial. |
| → <input type="checkbox"/> | <input type="checkbox"/> | 15. The right to remain silent during any stage of the proceedings (unless I choose to testify on my own behalf). |
| → <input type="checkbox"/> | <input type="checkbox"/> | 16. I understand as a term and condition of this plea that I <u>waive</u> any direct appeal I may have, absent any appeal to sentencing error. |

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CONSEQUENCES OF PLEA OF GUILTY OR NO CONTEST [AND ADMISSION OF ENHANCEMENT(S) / PRIOR CONVICTION(S)]

- 17. I understand that I may serve this maximum sentence as a result of my plea: ____ years and ____ months in State/County Prison, \$_____ fine, plus victim restitution and a restitution fine of a minimum of \$300.00 or a maximum of \$10,000.00. I understand that if I am sentenced to imprisonment to State Prison, upon release I will be subject to a period of 3 years State Parole/Post-Release Community Supervision with up to a one-year return to prison for every parole violation. If I should receive probation, I understand that I may be given up to a year in local custody, plus a fine, plus full victim restitution and/or a restitution fine, and any other conditions deemed reasonable by the Court. I understand that if I violate any terms or conditions of probation, I can be sent to State/County Prison for the maximum term stated above.
- 18. I understand that if I have previously been convicted of one or more felonies, whether in California or any other jurisdiction, either of the following could apply:
 - (a) If I have suffered a prior conviction of a serious or violent felony as defined in Penal Code §§ 1192.7, 1192.8 or 667.5(c), I will be statutorily ineligible for probation under the three strikes law of California.
 - (b) If I have suffered two or more felony convictions involving offenses other than serious or violent felonies, I will not receive probation unless the Court finds my present case to be an unusual case pursuant to Penal Code § 1203(e) and Rule of Court 4.413.
- 19. My attorney has explained to me that other possible consequences of my plea(s) [and admission(s)] may be (check applicable consequences):
 - (a) Consecutive sentences
 - (b) Loss of driving privileges
 - (c) Registration as an arsonist, sex offender, or street gang terrorist
 - (d) Statutorily ineligible for probation
 - (e) Probation will be granted only if the sentencing judge finds this to be an unusual case (Prison Presumptive)

(continued→)

- (f) The offense to which I have pled may be alleged as a sentencing enhancement in any future felony prosecution as (check if applicable):
 - (1) A serious or violent felony prior
 - (2) A "strike" under the three strikes law of California
 - (3) A prior prison term
- (g) Additional fines
- (h) 90-day diagnostic evaluation at State Prison
- (i) Participation in a substance abuse treatment program, batterer's program, or other program(s) as a condition of probation wherein I might be required to waive credits.
- (j) At the end of my sentence for this offense, I understand that I may be subject to screening by the Department of State Hospitals to determine whether I qualify for trial as a Sexually Violent Predator which could result in me being committed to a secure medical facility indefinitely. I also understand that my attorney and the district attorney's office have discussed but did not agree to a disposition of my charges that would not involve a sexually violent offense as part of my plea.
- (k) Other: _____

I Have Read, Understand, and Agree.

→ 20. I understand that by entering this **felony** plea, for the balance of my life I cannot own, possess, purchase or have under my control any firearm, ammunition, and ammunition feeding device, including an ammunition magazine. I also understand that it is a crime to possess such items. Further, I understand that as a result of my plea, I must timely turn over such items to the proper authorities, and that failure to do so may subject me to a compliance search and criminal penalties.

→ 21. I understand that by entering this qualifying **misdemeanor** plea, I cannot own, possess, purchase or have under my control any firearm, ammunition, or ammunition feeding device, including an ammunition magazine, for the next ten years (or if a plea to PC273.5, PC245(a)(2), PC246, PC417(c) or second conviction of PC417(c)(2) -- a lifetime ban), under state law. I also understand that it is a crime to possess such items. Further, I understand that as a result of my plea, I must timely turn over such items to the proper authorities, and that failure to do so may subject me to a compliance search and criminal penalties.

→ 22. If I am not a citizen, I am hereby advised that conviction of the offense for which I have been charged may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States. I am also aware that some violations will result in mandatory deportation, exclusion from the United States, or denial of naturalization pursuant to the laws of the United States. By signing this form, I acknowledge that, if it applies to me, I am aware of this potential consequence, have discussed it with my attorney (if I have one,) and am entering this plea with full knowledge of the potential immigration consequences.

→ 23. I understand that my plea of guilty/no contest in this case could result in revocation of my probation or Parole/Post-Release Community Supervision in other cases, whether in Butte County or any other jurisdiction.

OTHER POTENTIAL CONSEQUENCES (IF APPLICABLE)

→ 24. I understand that by pleading guilty/no contest in this case and having been previously convicted of one or more strikes, the credits for time served that I may gain in custody as to this offense cannot exceed one-fifth of the total term of imprisonment. That is, I must actually serve 80% of any sentence imposed before I become eligible for Parole/Post-Release Community Supervision.

→ 25. I understand that by pleading guilty/no contest to a felony offense listed in Penal Code § 667.5(c) [violent felony] the credits for time served I may gain in custody as to said offense cannot statutorily exceed 15% of the total term of imprisonment including local confinement; that is, I must actually serve 85% of any sentence imposed before I will be eligible for Parole/Post-Release Community Supervision. However recent regulations by the California Department of Corrections and Rehabilitation afford additional credit.

→ 26. **CONDUCT CONSTITUTING DOMESTIC VIOLENCE – CHILD CUSTODY:** I acknowledge that my plea is based upon an act defined by law as an act of domestic violence. I further acknowledge my awareness of Family Code § 3044 which is the event of a child custody dispute between myself and the other parent of my child or children, creates a rebuttable presumption that I am unfit to have sole or joint custody of my minor children. (A copy of the statute is on page seven of this form).

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27. I hereby stipulate and agree that the weapon(s) associated with this case, _____, can be declared a nuisance and disposed of pursuant to Penal Code §§ 18000, 18005, and 18010.

SENTENCING



28. I do understand that the matter of probation and sentencing is to be determined solely by the Superior Court Judge.



29. Harvey Waiver: I stipulate the sentencing judge may consider my prior criminal history and the entire factual background of the case, including any unfiled, dismissed or stricken charges or allegations or cases when granting probation, ordering restitution or imposing sentence.



30. Arbuckle Waiver: I hereby waive my right to be sentenced by the judge who accepted this plea and agree I can be sentenced by any judge assigned to my case.

MANDATORY ADVISEMENT



31. I understand that if I am charged with violating Vehicle Code § 23103, as specified in Vehicle Code § 23103.5, or Vehicle Code §§ 23152 or 23153, the following advisement applies:

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



32. I understand that if I am charged with violating Health and Safety Code §11351, 11351.5, 11352, 11378, 11378.5, 11379, 11379.5, or 11379.6 involving a "hard drug" as defined by Health and Safety Code §11369(d), the following advisement applies:

You are hereby advised that it is extremely dangerous and deadly to human life to illicitly manufacture, distribute, sell, furnish, administer, or give away any drugs in any form, including real or counterfeit drugs or pills. You can kill someone by engaging in this conduct. All drugs and counterfeit pills are dangerous to human life. These substances alone, or mixed, kill human beings in very small doses. If you illicitly manufacture, distribute, sell, furnish, administer, or give away any real or counterfeit drugs or pills, and that conduct results in the death of a human being, you could be charged with homicide, up to and including the crime of murder, within the meaning of Section 187 of the Penal Code.

DEFENDANT'S STATEMENT

I declare under penalty of perjury, under the laws of the State of California, that I have read, understood, and initialed each item above, and everything on the form is true and correct.

DATE

DEFENDANT'S SIGNATURE

ATTORNEY'S STATEMENT

I am the attorney for the defendant. I reviewed this form with my client and have explained each of the defendant's rights to him/her and answered all his/her questions with regard to his/her plea. Further, I have discussed with my client the content, substance, and meaning of all items and paragraphs initialed by him/her. I have discussed the facts of the defendant's case with him/her and explained the consequences of his/her plea, the elements of the offense, and the possible defenses. I concur in the plea and the defendant's decision to waive constitutional rights.

DATE

ATTORNEY'S SIGNATURE

INTERPRETER'S STATEMENT

(IF APPLICABLE)

I, the interpreter in the proceeding, having been duly sworn, truly translated this form and all the questions therein to defendant in the _____ language. The defendant indicated that he/she understood the contents of the form and he/she then initialed and signed the form.

DATE

INTERPRETER'S SIGNATURE

DISTRICT ATTORNEY'S STATEMENT

The People of the State of California, plaintiff in the above-entitled criminal action, by and through its attorney, Michael L. Ramsey, District Attorney, having reviewed this completed plea form, concurs in the defendant's plea(s) of guilty/no contest [and admission(s) of any enhancement(s) or prior conviction(s)], as set forth above.

DATE

DISTRICT ATTORNEY'S SIGNATURE

COURT'S FINDING AND ORDER

The Court, having reviewed this completed plea form, and having questioned the defendant concerning the defendant's constitutional rights, finds that defendant has voluntarily, expressly, explicitly, knowingly, understandingly, and intelligently waived his/her constitutional rights. The Court finds that defendant's plea(s) [and admission(s)] are freely and voluntarily made, that defendant understands the nature of the charges and the consequences of the plea(s) [and admission(s)], and that there is a factual basis for the plea(s) [and admission(s)], and the defendant is hereby convicted based thereon.

DATE

JUDGE'S SIGNATURE

PRESUMPTION BASED ON VIOLENCE
CALIFORNIA FAMILY CODE SECTION 3044

(a) Upon a finding by the court that a party seeking custody of a child has perpetrated domestic violence within the previous five years against the other party seeking custody of the child, or against the child or the child's siblings, or against a person in subparagraph (A) of paragraph (2) of subdivision (a) of Section 3011 with whom the party has a relationship, there is a rebuttable presumption that an award of sole or joint physical or legal custody of a child to a person who has perpetrated domestic violence is detrimental to the best interest of the child, pursuant to Sections 3011 and 3020. This presumption may only be rebutted by a preponderance of the evidence.

(b) To overcome the presumption set forth in subdivision (a), the court shall find that paragraph (1) is satisfied and shall find that the factors in paragraph (2), on balance, support the legislative findings in Section 3020.

(1) The perpetrator of domestic violence has demonstrated that giving sole or joint physical or legal custody of a child to the perpetrator is in the best interest of the child pursuant to Sections 3011 and 3020. In determining the best interest of the child, the preference for frequent and continuing contact with both parents, as set forth in subdivision (b) of Section 3020, or with the noncustodial parent, as set forth in paragraph (1) of subdivision (a) of Section 3040, may not be used to rebut the presumption, in whole or in part.

(2) Additional factors:

(A) The perpetrator has successfully completed a batterer's treatment program that meets the criteria outlined in subdivision (c) of Section 1203.097 of the Penal Code.

(B) The perpetrator has successfully completed a program of alcohol or drug abuse counseling, if the court determines that counseling is appropriate.

(C) The perpetrator has successfully completed a parenting class, if the court determines the class to be appropriate.

(D) The perpetrator is on probation or parole, and has or has not complied with the terms and conditions of probation or parole.

(E) The perpetrator is restrained by a protective order or restraining order, and has or has not complied with its terms and conditions.

(F) The perpetrator of domestic violence has committed further acts of domestic violence.

(G) The court has determined, pursuant to Section 6322.5, that the perpetrator is a restrained person in possession or control of a firearm or ammunition in violation of Section 6389.

(c) For purposes of this section, a person has "perpetrated domestic violence" when the person is found by the court to have intentionally or recklessly caused or attempted to cause bodily injury, or sexual assault, or to have placed a person in reasonable apprehension of imminent serious bodily injury to that person or to another, or to have engaged in behavior involving, but not limited to, threatening, striking, harassing, destroying personal property, or disturbing the peace of another, for which a court may issue an ex parte order pursuant to Section 6320 to protect the other party seeking custody of the child or to protect the child and the child's siblings.

(d) (1) For purposes of this section, the requirement of a finding by the court shall be satisfied by, among other things, and not limited to, evidence that a party seeking custody has been convicted within the previous five years, after a trial or a plea of guilty or no contest, of a crime against the other party that comes within the definition of domestic violence contained in Section 6211 and of abuse contained in Section 6203, including, but not limited to, a crime described in subdivision (e) of Section 243 of, or Section 261, 273.5, 422, or 646.9 of, or former Section 262 of, the Penal Code.

(2) The requirement of a finding by the court shall also be satisfied if a court, whether that court hears or has heard the child custody proceedings or not, has made a finding pursuant to subdivision (a) based on conduct occurring within the previous five years.

(e) When a court makes a finding that a party has perpetrated domestic violence, the court may not base its findings solely on conclusions reached by a child custody evaluator or on the recommendation of the Family Court Services staff, but shall consider any relevant, admissible evidence submitted by the parties.

(f) (1) It is the intent of the Legislature that this subdivision be interpreted consistently with the decision in *Jaime G. v. H.L.* (2018) 25 Cal.App.5th 794, which requires that the court, in determining that the presumption in subdivision (a) has been overcome, make specific findings on each of the factors in subdivision (b).

(2) If the court determines that the presumption in subdivision (a) has been overcome, the court shall state its reasons in writing or on the record as to why paragraph (1) of subdivision (b) is satisfied and why the factors in paragraph (2) of subdivision (b), on balance, support the legislative findings in Section 3020.

(g) In an evidentiary hearing or trial in which custody orders are sought and where there has been an allegation of domestic violence, the court shall make a determination as to whether this section applies prior to issuing a custody order, unless the court finds that a continuance is necessary to determine whether this section applies, in which case the court may issue a temporary custody order for a reasonable period of time, provided the order complies with Sections 3011 and 3020.

(h) In a custody or restraining order proceeding in which a party has alleged that the other party has perpetrated domestic violence in accordance with the terms of this section, the court shall inform the parties of the existence of this section and shall give them a copy of this section prior to custody mediation in the case.