

SPECIAL DIRECTIVE 22-04

TO: ALL DISTRICT ATTORNEY PERSONNEL

FROM: SHARON L. WOO 
Chief Deputy District Attorney

SUBJECT: SENATE BILL 567: PLEADING AND PROVING AGGRAVATING FACTORS TO ALLOW FOR A HIGH-TERM PRISON SENTENCE

DATE: APRIL 21, 2022

Effective January 1, 2022, Senate Bill No. 567 (SB 567) amended Penal Code¹ sections 1170 and 1170.1. Under the new law, a court may only impose a sentence exceeding the mid-term of a triad when one or more circumstances in aggravation related to the crime or to the defendant exist and have been proven.

Specifically, the new law requires that circumstances in aggravation must be admitted by the defendant or proven beyond a reasonable doubt to a judge or jury at trial in order to permit the imposition of a high-term sentence.² (§ 1170(b)(2).) The added limitation on the court's authority to impose high-term prison sentences also applies to enhancements that are punishable by a triad of prescribed terms. (§ 1170.1(d)(1).) Further, other than as discussed below, a high-term determinate sentence may only be imposed if the facts underlying an aggravating factor are either stipulated to by the defendant or presented and proven at trial.³ (§§ 1170(b)(2); 1170.1(d)(2).)

SB 567 is retroactive as to cases that were not final on appeal as of January 1, 2022.⁴

¹ Further statutory references are to the Penal Code unless otherwise indicated.

² Section 1170 was also recently amended through the independent addition of a subsection that mandates the imposition of a low-term sentence if any of the following was a contributing factor in the commission of the crime: (A) psychological, physical, or childhood trauma experienced by the defendant; (B) the defendant's youth (defined as 25 years of age or younger when the offense was committed); or (C) the defendant had been a victim of intimate partner violence or human trafficking. (§ 1170(b)(6).) However, the court is not required to impose a low-term sentence under this section if the court finds that the aggravating circumstances outweigh the mitigating circumstances in that a low-term sentence would be contrary to the interests of justice. (*Ibid.*) Aggravating factors need not be alleged and proven to a jury for purposes of section 1170(b)(6), as the court is permitted to consider factors in aggravation and mitigation in order to exercise its discretion as to the appropriate term. (*People v. Black* (2007) 41 Cal.4th 799, 815-816.)

³ If a case is to be tried to a jury, the court must bifurcate the trial on the aggravating circumstances upon the defendant's request, unless evidence of the aggravated circumstances is admissible to prove or defend against the charged offense or enhancement or is otherwise authorized by law. (§ 1170(b)(2).)

⁴ The absence of language in SB 567 on the issue of retroactivity is consistent in this context with retroactive application. See *In re Estrada* (1965) 63 Cal.2d 740 (absent evidence to the contrary, the Legislature intends amendments to statutes that reduce the punishment for a particular crime to apply to all defendants whose judgments are not yet final on appeal on the amendment's operative date); and *People v. Flores* (2022) 73 Cal.App.5th 1032 (an analogous amendment to section 1170, discussed in fn. 2, was held to apply retroactively as an ameliorative change in the law applicable to all nonfinal convictions on appeal).

Circumstances in aggravation are set forth in California Rules of Court (CRC) Rule 4.421, which is expressly non-exclusive. CRC Rule 4.421 and CRC Rule 4.423, which provides factors in mitigation, are attached as appendices to this Special Directive. Importantly, a fact that is an element of a charged offense may not concurrently be used as an aggravating factor to impose a high-term sentence. (CRC Rule 4.420, subd. (d), cited in *Cunningham v. California* (2007) 549 U.S. 270, 279.)

Pleading Circumstances in Aggravation

In order to establish the availability of the full range of sentencing options in a felony matter, any circumstance in aggravation that is supported by the available evidence should be alleged in the charging document.⁵ Charge evaluation deputies should consider which, if any, of the circumstances in aggravation exist, based on the available evidence, at the time of filing as to each of the offenses and enhancements to be charged. Charge evaluation deputies should ensure that circumstances in aggravation are alleged when supported by sufficient evidence and in light of the circumstances of the case. In addition, pursuant to CRC 4.421(c), any factor statutorily declared to be circumstances in aggravation or that reasonably relate to the defendant or the circumstances under which the crime was committed should also be alleged. The UCC Manual and PIMS have been updated to reflect the specific language of the circumstances in aggravation, including some of the more common aggravating factors established by other statutes. ([See GOM 22-013.](#))

Deputies handling a felony case after filing should make appropriate amendments to the charging document when evidence is discovered that warrants the filing of aggravating circumstances or supports the dismissal of aggravating circumstances alleged. When a defendant is held to answer at a preliminary hearing, the deputy who conducted the preliminary hearing is to review and complete the *Circumstances in Aggravation Pleading Form* to ensure the Information accurately reflects the aggravating circumstances that are supported by the available evidence in that case. If, after review, the preliminary hearing deputy believes that none of the circumstances in aggravation appear to exist, that assessment should be noted on the form.

The completed *Circumstances in Aggravation Pleading Form* is to be submitted with the Information Pleading Instructions for creation of the Information by support staff.

As an additional level of review, the Head Deputy will evaluate whether, given the totality of the evidence, the alleged aggravating circumstances are accurate, and whether a high-term sentence may reasonably be warranted. The Head Deputy or his or her designee is responsible for authorizing the circumstances in aggravation as alleged by signing the Circumstances in Aggravation Pleading form and the Information.

⁵ The law does not appear to require that an aggravating circumstance be pled and proven at preliminary hearing in order for the factor to be alleged and proven at trial. (*Barrigan v. Superior Court* (2007) 148 Cal.App.4th 1478, 1483-1484.) However, in an effort to be prepared for the unforeseeable resolution of a felony matter, provable factors in aggravation should be alleged as to applicable charges and enhancements as early in the prosecution of a case as possible.

Exception for Proof of Prior Convictions

An exception to the rule generally requiring a stipulation or a jury finding exists when the aggravating circumstance is based on a defendant's prior conviction(s). For prior convictions, the court, rather than a jury, may determine through a certified record of conviction, that the facts underlying the aggravated circumstance have been established. (§ 1170(b)(3).) However, a court may not use the prior convictions exception to determine the existence of an aggravating circumstance when it involves an allegation that was used to enhance a prior conviction, such as use of a weapon or infliction of great bodily injury. (*Ibid.*)

The statutory exception allowing a court to base a high-term sentence on a defendant's prior criminal conduct, as established by a certified record of conviction, applies in this context when the aggravating circumstance is one of the following factors:

- Defendant's conviction for a prior felony offense⁶
- Criminal record of increasing seriousness⁷
- Defendant was on parole, probation, mandatory supervision, or PRCS at the time the current offense was committed⁸
- Prior performance on parole, probation, mandatory supervision, or PRCS, but only if the unsatisfactory performance is based on a conviction for a new crime⁹
- Prior prison terms¹⁰
- Prior juvenile adjudications¹¹
- Crime committed while out on bail¹²

Plea Agreements

When a defendant agrees to a high-term sentence as part of a negotiated plea agreement, the defendant must expressly admit the truth of an aggravating circumstance and stipulate to the facts supporting that aggravated circumstance. Similarly, if a negotiated plea agreement involves a suspended high-term sentence; or felony probation is otherwise granted and the presence of one or more aggravating factors gives rise to a need to preserve the possibility that a high-term prison sentence may later be imposed on a violation of probation; or, on an open plea, if the court seeks to retain discretion to impose a high-term sentence on a probation violation, the defendant must stipulate to a specified circumstance in aggravation and admit the factual basis for that stipulated circumstance in aggravation.

Because these changes to the law implicate defendants' constitutional right to a jury trial on any aggravating factors, defendants must be advised of the right to a jury trial on any circumstance in

⁶ *People v. Cardenas* (2007) 155 Cal.App.4th 1468, 1481-1483.

⁷ *People v. Black, supra*, 41 Cal.4th at pp. 819-820.

⁸ *People v. Capistrano* (2014) 59 Cal.4th 830, 882-884, overruled on other grounds by *People v. Hardy* (2018) 5 Cal.5th 56.

⁹ *People v. Towne* (2008) 44 Cal.4th 63, 82-83.

¹⁰ *People v. Thomas* (2001) 91 Cal.App.4th 212, 216-220.

¹¹ *People v. Nguyen* (2007) 46 Cal.4th 1007, 1011-1012.

¹² *People v. Johnson* (2012) 208 Cal.App.4th 1092, 1099-1100.

aggravation and the prosecution's burden of proving any alleged circumstance in aggravation beyond a reasonable doubt, and they must waive those rights in addition to the general waiver of a right to a jury trial.

Such waivers are not necessary when there are no known circumstances in aggravation or a defendant pleads guilty or no contest for an agreed-upon low-term or mid-term sentence.

Sample plea transcripts that suggest language consistent with the guidance in this Special Directive are attached as an appendix to this Directive.

Closed Cases Reviewed Retroactively

A defendant who agreed to a high-term sentence as part of a negotiated plea agreement has implicitly agreed to the facts that support the sentence, including the existence of aggravating circumstances that permit the imposition of the high-term sentence.¹³ In contrast, a defendant who entered into a plea agreement in which the court retained the discretion to impose a sentence up to and including the high-term has not implicitly agreed to the existence of aggravating circumstances, which must expressly be admitted or independently established in order for a high-term sentence to be imposed.¹⁴

The court's consideration of a defendant's criminal history at time of sentencing support the imposition or suspension of a high-term sentence as an exception to the general rule that an aggravating factor must be admitted or proven to a jury. (*People v. Black, supra*, 818 Cal.4th at pp. 818-820.) However, the trial court must have relied on the defendant's criminal record as a reason for imposing the high-term sentence. (*People v. Cardenas, supra*, 155 Cal.App.4th at pp. 1480-1481.)

The record may also reflect a basis for the imposition of a high-term sentence if the defendant or defense counsel stipulated to a factual basis or statement that includes one or more aggravating circumstances (*People v. French* (2008) 43 Cal.4th 36, 48-52), or if the defendant provided a waiver to the court that allowed the court to consider, for purposes of sentencing, the defendant's criminal history and factual background, including unfiled, dismissed, or stricken charges, allegations, or cases. (*People v. Munoz* (2007) 155 Cal.App.4th 160, 166-168.)

Aggravating Circumstance Necessarily Proven to Trier-of-Fact

An aggravating circumstance that has necessarily been proven to a jury as a factor that is not an element of a charged offense establishes the existence of an aggravating factor through the finding or verdict and need not separately be proven for a high-term sentence to be imposed. Examples of this include the existence of multiple victims in a case, as determined by the jury

¹³ See *People v. Hester* (2000) 22 Cal.4th 290, 295 ("When ... the trial court's sentence violates rules which would have required the imposition of a more lenient sentence, yet the defendant avoided a potentially harsher sentence by entering into the plea bargain, it may be implied that the defendant waived any rights under such rules by choosing to accept the plea bargain.").

¹⁴ *People v. French* (2008) 43 Cal.4th 36, 48-49.

that convicted the defendant of charges involving different victims;¹⁵ and a use of force sentencing allegation, found true by a jury, that renders a defendant ineligible for probation.¹⁶

Rule 4.421. Circumstances in aggravation

Circumstances in aggravation include factors relating to the crime and to the defendant.

(a) Factors relating to the crime

Factors relating to the crime, whether or not charged or chargeable as enhancements include that:

- (1) The crime involved great violence, great bodily harm, threat of great bodily harm, or other acts disclosing a high degree of cruelty, viciousness, or callousness;
- (2) The defendant was armed with or used a weapon at the time of the commission of the crime;
- (3) The victim was particularly vulnerable;
- (4) The defendant induced others to participate in the commission of the crime or occupied a position of leadership or dominance of other participants in its commission;
- (5) The defendant induced a minor to commit or assist in the commission of the crime;
- (6) The defendant threatened witnesses, unlawfully prevented or dissuaded witnesses from testifying, suborned perjury, or in any other way illegally interfered with the judicial process;
- (7) The defendant was convicted of other crimes for which consecutive sentences could have been imposed but for which concurrent sentences are being imposed;
- (8) The manner in which the crime was carried out indicates planning, sophistication, or professionalism;
- (9) The crime involved an attempted or actual taking or damage of great monetary value;
- (10) The crime involved a large quantity of contraband; and
- (11) The defendant took advantage of a position of trust or confidence to commit the offense.
- (12) The crime constitutes a hate crime under section 422.55 and:
 - (A) No hate crime enhancements under section 422.75 are imposed; and
 - (B) The crime is not subject to sentencing under section 1170.8.

(b) Factors relating to the defendant

Factors relating to the defendant include that:

- (1) The defendant has engaged in violent conduct that indicates a serious danger to society;
- (2) The defendant's prior convictions as an adult or sustained petitions in juvenile delinquency proceedings are numerous or of increasing seriousness;
- (3) The defendant has served a prior term in prison or county jail under section 1170(h);
- (4) The defendant was on probation, mandatory supervision, postrelease community supervision, or parole when the crime was committed; and
- (5) The defendant's prior performance on probation, mandatory supervision, postrelease community supervision, or parole was unsatisfactory.

¹⁵ *People v. Calhoun* (2007) 40 Cal.4th 398, 406. Although the circumstance in aggravation concerning multiple victims is no longer listed in CRC Rule 4.421, this factor may still be cited by the court as a fact supporting the imposition of a high-term sentence. (*Id.* at pp. 405-406.)

¹⁶ *People v. Black, supra*, 41 Cal.4th at pp. 816-817.

(c) Other factors

Any other factors statutorily declared¹⁷ to be circumstances in aggravation or that reasonably relate to the defendant or the circumstances under which the crime was committed.

Rule 4.423. Circumstances in mitigation

Circumstances in mitigation include factors relating to the crime and factors relating to the defendant.

(a) Factors relating to the crime

Factors relating to the crime include that:

- (1) The defendant was a passive participant or played a minor role in the crime;
- (2) The victim was an initiator of, willing participant in, or aggressor or provoker of the incident;
- (3) The crime was committed because of an unusual circumstance, such as great provocation, that is unlikely to recur;
- (4) The defendant participated in the crime under circumstances of coercion or duress, or the criminal conduct was partially excusable for some other reason not amounting to a defense;
- (5) The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime;
- (6) The defendant exercised caution to avoid harm to persons or damage to property, or the amounts of money or property taken were deliberately small, or no harm was done or threatened against the victim;
- (7) The defendant believed that he or she had a claim or right to the property taken, or for other reasons mistakenly believed that the conduct was legal;
- (8) The defendant was motivated by a desire to provide necessities for his or her family or self; and
- (9) The defendant suffered from repeated or continuous physical, sexual, or psychological abuse inflicted by the victim of the crime, and the victim of the crime, who inflicted the abuse, was the defendant's spouse, intimate cohabitant, or parent of the defendant's child; and the abuse does not amount to a defense.

(b) Factors relating to the defendant

Factors relating to the defendant include that:

- (1) The defendant has no prior record, or has an insignificant record of criminal conduct, considering the recency and frequency of prior crimes;
- (2) The defendant was suffering from a mental or physical condition that significantly reduced culpability for the crime;

¹⁷ Examples of mandatory statutorily declared aggravating factors include: section 1170.85 [dissuading witnesses by battering or assaulting them or where victim is particularly vulnerable], section 422.76 [hate crime], section 1170.7 [robbery or attempted robbery against specified individuals to obtain controlled substances], section 1170.71 [use of obscene or harmful matter to induce, persuade, or encourage minor to engage in lewd or lascivious act in committing section 288], 1170.8 [robbery or ADW against individuals at religious locations or burning religious locations]. (See *People v. Sandoval* (2007) 41 Cal.4th 825, 849, discussing the limitations of using court rules to prove aggravating factors to a jury.)

- (3) The defendant voluntarily acknowledged wrongdoing before arrest or at an early stage of the criminal process;
- (4) The defendant is ineligible for probation and but for that ineligibility would have been granted probation;
- (5) The defendant made restitution to the victim; and
- (6) The defendant's prior performance on probation, mandatory supervision, postrelease community supervision, or parole was satisfactory.

(c) Other factors

Any other factors statutorily declared to be circumstances in mitigation or that reasonably relate to the defendant or the circumstances under which the crime was committed.

sk/jls

Attachments

FELONY GUILTY PLEA SCRIPT (SHORT FORM)

FOUNDATIONAL MATTERS

- What is your true name?
- What is your date of birth?

Charges and Maximum Sentence

- You are charged in case number (XA XXXXX), in Count __ with a violation of (code section) (name of crime), a felony. [Repeat for every count and enhancement]. [*Include all circumstances in aggravation*]. [This carries a maximum sentence of (maximum sentence) {and a mandatory minimum sentence of (mandatory minimum sentence)}.]
- Do you understand the charges [and your maximum {and minimum} sentence]?

Consultation with Counsel

- Have you had enough time to talk to your lawyer, to discuss the facts of the case and your rights and defenses?

Details of the Plea

- If you agree to change your plea to guilty {or no contest} the People offer (proposed sentence) for a plea to Count(s) __ a violation of (code section) (name of crime), (and admission to enhancement(s) and Circumstances in Aggravation).
- [IF THE PLEA IS OPEN TO THE COURT: You understand that an open plea requires you to change your plea to all the charges and admit all the enhancements [and circumstances in aggravation]. The judge will decide your sentence based upon the facts of this case, your criminal record, and the probation report. The People are making you no promises about your sentence.]
- Do you understand the terms of the agreement {or open plea}?
- Is that what you want to do?

Before you change your plea, I must inform you of your constitutional rights, the consequences of your plea and ask you some questions.

CONSTITUTIONAL RIGHTS

- You have the *right to a jury trial* on each charge (enhancement and circumstance in aggravation). In a jury trial, 12 members of the community listen to all the evidence. You can only be found guilty if all 12 jurors find you guilty beyond a reasonable doubt.
- You have the *right to confront and cross examine* the witnesses against you; this means your lawyer will ask them questions in your presence.
- You have the *right to present a defense* and *to subpoena witnesses* to court at no cost to you, using the free subpoena power of the court.
- You have the *right to remain silent*. No one can force you to testify against yourself. When you change your plea, you are giving up this right and implicating yourself.

- [IF CASE IS PRE-PRELIM: You have the *right to a preliminary hearing*. At a preliminary hearing the magistrate will listen to the evidence. If the magistrate finds a reasonable suspicion that you committed the crime, you will be sent to a trial court for a trial.]
- [IF THE DEFENDANT IS PRO-PER: You have the *right to an attorney*. If you cannot afford to hire a lawyer, one will be appointed for you free of charge. At the end of the case you may be asked to pay all or part of the cost of that attorney, if you can afford to. There are dangers and disadvantages in giving up your right to an attorney, and it is almost always unwise to represent yourself. Do you still want to proceed without a lawyer?]
- Do you understand each of these rights?
- Do you give up each of these rights?

CONSEQUENCES

-->Supervision and Incarceration

State Prison

- [IF THE DEFENDANT IS RECEIVING A DETERMINATE SENTENCE OF 1 YEAR AND 1 DAY OR MORE – NOT A SEX CRIME] Under the terms of this agreement, you will be sent to state prison. When you are released, you will be placed on Parole or Post-Release Community Supervision, PRCS, for up to 3 years with various terms and conditions. If you abscond or violate any term or condition of Parole or PRCS, your period of supervision can be extended and you can be sentenced to county jail for up to 180 days for each violation.
- [IF THE DEFENDANT IS RECEIVING A HIGH-TERM SENTENCE ON ONE OR MORE CHARGES OR ENHANCEMENTS: You have agreed to a high-term sentence in this case in order to take advantage of the agreed-upon disposition {even though no Circumstances in Aggravation exist or are being admitted}.]
- Some state prison inmates receive conduct credit that reduces the actual time they spend in prison. We do not make any promises about conduct credit you might receive. In fact, no one, including your lawyer, can promise you how much conduct credit you will receive. Do you understand that you will not be allowed to withdraw your plea because you relied on a promise or representation from anyone about the conduct credits you might receive in state prison?
- [IF DEFENDANT IS PLEADING TO A LIFE CRIME (except 1st or 2nd degree Murder or Sex Crimes)]: Because you have been convicted of a life crime, once you are released from prison, you will be released on Parole for up to 5 years.]
- [IF DEFENDANT IS PLEADING TO 1st or 2nd DEGREE MURDER: Because you have been convicted of murder, once you are released from prison, you will remain on Parole for the rest of your life.]
- [IF DEFENDANT IS PLEADING TO PC 290-Registrable SEX CRIME WITH A VICTIM OVER AGE 14: Because you have been convicted of a PC 290-registrable sex crime, once you are released from prison, you will remain on Parole or PRCS for 10 years with various terms and conditions. If you abscond or violate any term or condition of Parole or PRCS, your period of supervision

can be extended and you can be sentenced to county jail for up to 180 days for each violation.]

- [IF DEFENDANT IS PLEADING TO PC 290-Registrable SEX CRIME WITH A VICTIM UNDER AGE 14: Because you have been convicted of a PC 290-registrable sex crime with a victim under age 14, once you are released from prison, you will remain on Parole or PRCS for 20 years 6 months unless the Board of Parole Hearings determines it should be longer. If you abscond or violate any term or condition of Parole or PRCS, your period of supervision can be extended and you can be sentenced to county jail for up to 180 days for each violation.]
- [IF DEFENDANT IS PLEADING TO A LIFE SEX CRIME OR PC 209 BASED ON INTENT TO COMMIT A SEX CRIME WHERE THE VICTIM IS OVER AGE 14: Because you have been convicted of a life sex crime, once you are released from prison, you will remain on Parole for 10 years. If you abscond or violate any term or condition of Parole or PRCS, your period of supervision can be extended and you can be sentenced to county jail for up to 180 days for each violation.]
- [IF DEFENDANT IS PLEADING TO A LIFE SEX CRIME OR PC 209 BASED ON INTENT TO COMMIT A SEX CRIME WHERE THE VICTIM IS UNDER AGE 14: Because you have been convicted of a life sex crime, once you are released from prison, you will remain on Parole for the rest of your life.]

Split Sentence

- You will receive a split sentence. After serving your term in local prison you will be released on Mandatory Supervision with various terms and conditions. If you violate any term or condition of Mandatory Supervision, you will be returned to local prison to complete the rest of your sentence.

Formal Probation

- You are going to be placed on probation with various terms and conditions. If you violate any term or condition of probation you can be sent to (local prison/state prison) for (maximum term for charges pleaded or suspended term, if execution of sentence is suspended). If you are sent to state prison, you will eventually be released on Parole or PRCS for up to 3 years with various terms and conditions. If you abscond or violate any term or condition of Parole or PRCS, you will be sent to county jail for up to 180 days for each violation.
- [IF CIRCUMSTANCES IN AGGRAVATION ARE ALLEGED: Your admission to Circumstances in Aggravation will enable the court to impose a high-term sentence on applicable charges and enhancements if you are later found to be in violation of this grant of probation.]

Search and Seizure

- As part of your (Probation/Mandatory Supervision/PRCS/Parole) you will be required to submit your person, residence, vehicle and personal belongings to search or seizure at any time of the day or night, with or without probable cause, by any law enforcement officer.

- [IF SEARCH CONDITION IS TO INCLUDE ELECTRONIC INFORMATION OR DEVICES, ADD: This search condition will also apply to your electronic information or devices, particularly [name the device(s)]. Do you give up your rights under Penal Code sections 1546 through 1546.4 and agree that your electronic device(s) can be searched?]

Violation of Current Grant of Supervision

- If you are currently on Parole, PRCS, Probation or Mandatory Supervision in any other case, your conviction today will be a violation of your other grant of supervised release. {IF THE VIOLATION IS NOT INCLUDED IN THE PLEA AGREEMENT: We make no promises about how your violation will be handled.}

Immigration

- If you are not a citizen of the United States, because of your plea today you will be deported, excluded from admission to the United States or denied naturalization.

Have you spoken to your attorney about your immigration consequences?

Has your attorney told you anything different than I have just told you?

In light of the immigration consequences I just advised you about, do you need more time to discuss this disposition with your attorney?

Knowing these immigration consequences, do you wish to plead guilty or no contest to this offense today?

Firearm/ Ammunition Restriction

- This felony conviction will prohibit you from owning, using, or possessing a firearm or ammunition.

Priorability

- In the future, if you commit another crime, your conviction today may be used to make your sentence in your future case longer.
- [IF CURRENT CHARGE IS SERIOUS OR VIOLENT, ADD: The charge you are pleading to is a serious or violent crime, commonly called a strike. In the future, if you are convicted of a new felony your sentence in the new case will be doubled. If you have two serious or violent prior convictions, you may receive a life sentence if you are convicted of a 3rd offense.]

DNA

- You will be ordered to provide a DNA sample and palm and fingerprints.

Victim Restitution/Harvey Waiver

- You will be required to pay restitution to the victims in this case, including any victims whose counts are dismissed as part of this plea agreement. Do you understand that?

Specific Crimes and Registration

Sex Crimes

- You will be required to register as a sex offender with your local police agency within 48 hours of your release from custody and within 5 days of your birthday every year. In addition, if you move your residence you must re-register within 5 days, and if you move to another city or area, you must notify the police agency where you moved from.

Arson

- You will be required to register as an arson offender with your local police agency.

DUI/Watson Advisement

- Driving under the influence of alcohol or drugs is extremely dangerous to human life. If, in the future, you drive under the influence of alcohol or drugs and someone is killed, you will be charged with murder.

Gangs

- You will be required to register as a gang member with your local police agency within 10 days and if you move from your address, within 10 days of every move.

Waiver of Appellate Rights

- You have the right to appeal the proceedings in this case. Do you waive and give up the right to appeal your conviction, the judgement, and any other orders previously issued by this court, including collateral attacks on your conviction or sentence at any time in the future and agree that you will not ask the court to withdraw your plea for any reason after it is entered in order to take advantage of the plea agreement offered today?

CONCLUDING QUESTIONS

- Has anyone made you any promises besides what I have stated on the record in order to get you to change your plea?
- Has anyone threatened you or anyone close to you in order to get you to change your plea?
- Are you changing your plea freely and voluntarily because it is what you want to do?

Factual Basis

- [ACTUAL FACTUAL BASIS] Do you admit that on (date) in Los Angeles County, you (include brief statement of facts covering all of the elements, the name of the victim or other variable information, and any enhancements, i.e., use of weapon or GBI. IF a high term is (or may be in the future) sought, Defendant must also expressly admit the facts supporting any aggravating circumstances that were admitted).
- [IF ALFORD PLEA (sometimes called, colloquially, a West plea): Are you changing your plea because after evaluating all of the facts and circumstances, you believe it is in your best interest to take advantage of what the People are {or, the Court is} offering you today?]

Taking the Plea

- Your honor, does the court have any inquiries? May I take the plea?
- Mr./Ms. (surname of defendant), in case number (XA XXXXX) to the charge of (code section) (name of crime), how do you plead? {Repeat for each count}
- [IF NO CONTEST PLEA: Do you understand when you plead no contest, the court finds you guilty and you are treated as though you are guilty for all purposes?
- [IF NGI PLEA/LOMBOY WAIVER: When you plead not guilty by reason of insanity, you will be sent to a state hospital for treatment and restoration of sanity. At regular intervals you can be brought back to court and your stay at the hospital can be extended if the court finds your sanity has not been restored. These extensions can last for the rest of your life. Do you understand?]
- [IF THERE ARE **ENHANCEMENTS**: Mr./Ms. (surname of defendant) do you admit that you (describe enhancement, i.e., used a gun, inflicted great bodily injury on the victim) pursuant to (code section).
- [IF THERE ARE **PRIORS**: Mr./Ms. (surname of defendant) do you admit that you were previously convicted on (date of conviction) of a violation of (code section) (name of crime) in (name of court, i.e., Superior Court) of (jurisdiction, i.e. Los Angeles County) in violation of (code section)?] {Repeat for every prior}
- [IF THERE ARE **CIRCUMSTANCES IN AGGRAVATION**: Mr./Ms. (surname of defendant) do you admit that you (describe circumstance, i.e., took advantage of a position of trust, vulnerable victim, induced a minor to participate in the crime).
- Counsel, do you join in the waivers, concur in the plea (and admissions) and stipulate to a factual basis based upon the police reports, (the preliminary hearing transcript,) the probation report and any other discovery?
- The People join in the jury waiver.

Arbuckle Waiver

- You have the right to be sentenced by the same judge who heard your trial or your plea. In the event this judge is unavailable at the time of your sentencing, do you agree that any judge may sentence you?

POSTPONING PROBATION AND SENTENCING

- You have the right to be sentenced within 20 court days of your conviction. Do you understand and give up that right so that your sentencing can be set on (date)?

Cruz Waiver

- You will be released on bail {or on your own recognizance} until your sentencing. In the event you do not appear at the date of your sentencing, the promises made to you will be revoked and you can be sentenced to the maximum sentence. Do you understand?

FELONY GUILTY PLEA SCRIPT (LONG FORM)

FOUNDATIONAL MATTERS

- What is your true name?
- What is your date of birth?

Charges and Maximum Sentence

- You are charged in case number (XA XXXXX), in Count ___ with a violation of (code section) (name of crime), a felony. [Repeat for every count and enhancement]. [*Include all Circumstances in Aggravation*]. [This carries a maximum sentence of (maximum sentence)¹ {and a mandatory minimum sentence of (mandatory minimum sentence)}.]
- Do you understand the charges [and your maximum {and minimum} sentence]?

Consultation with Counsel

- Have you had enough time to talk to your lawyer, to discuss the facts of the case and your rights and defenses?

Details of the Plea

- If you agree to change your plea to guilty {or no contest} the People offer (proposed sentence) for a plea to Count(s) ___ a violation of (code section) (name of crime), (and admission to enhancement(s) and Circumstances in Aggravation).
- [IF THE PLEA IS OPEN TO THE COURT: You understand that an open plea requires you to change your plea to all the charges and admit all the enhancements [and Circumstances in Aggravation]. The judge will decide your sentence based upon the facts of this case, your criminal record, and the probation report. The People are making you no promises about your sentence.]
- Do you understand the terms of the agreement {or open plea}?
- Is that what you want to do?

Before you change your plea, I must inform you of your constitutional rights, the consequences of your plea and ask you some questions.

CONSTITUTIONAL RIGHTS

- You have the *right to a jury trial* on each charge (enhancement and Circumstance in Aggravation). In a jury trial, 12 members of the community listen to all the evidence. You can only be found guilty if all 12 jurors find you guilty beyond a reasonable doubt.
- You have the *right to confront and cross examine* the witnesses against you; this means your lawyer will ask them questions in your presence.

¹ The maximum sentence is the maximum of *all counts charged*, not just the counts the defendant is pleading to. *Bunnell v. Superior Ct.* (1975) 13 Cal. 3d 592. Some defense attorneys will balk at this because they believe it will discourage a plea so be ready to state both the maximum sentence for the entire case and the maximum sentence for just the counts the defendant is pleading to. But don't skip the real maximum for the entire case.

- You have the *right to present a defense* and *to subpoena witnesses* to court at no cost to you, using the free subpoena power of the court.
- You have the *right to remain silent*. No one can force you to testify against yourself. When you change your plea, you are giving up this right and implicating yourself.
- [IF CASE IS PRE-PRELIM: You have the *right to a preliminary hearing*. At a preliminary hearing the magistrate will listen to the evidence. If the magistrate finds a reasonable suspicion that you committed the crime, you will be sent to a trial court for a trial.]
- [IF THE DEFENDANT IS PRO-PER: You have the *right to an attorney*. If you cannot afford to hire a lawyer, one will be appointed for you free of charge. At the end of the case you may be asked to pay all or part of the cost of that attorney, if you can afford to. There are dangers and disadvantages in giving up your right to an attorney, and it is almost always unwise to represent yourself. Do you still want to proceed without a lawyer?]
- Do you understand each of these rights?
- Do you give up each of these rights?

CONSEQUENCES

Supervision and Incarceration ²

State Prison³

- [IF THE DEFENDANT IS RECEIVING A DETERMINATE SENTENCE OF 1 YEAR AND 1 DAY OR MORE – NOT A SEX CRIME] Under the terms of this agreement, you will be sent to state prison. When you are released, you will be placed on Parole or Post-Release Community Supervision, PRCS, for up to 3 years with various terms and conditions. If you abscond or violate any term or condition of Parole or PRCS, your period of supervision can be extended and you can be sentenced to county jail for up to 180 days for each violation.⁴
- [IF THE DEFENDANT IS RECEIVING A HIGH-TERM SENTENCE ON ONE OR MORE CHARGES OR ENHANCEMENTS: You have agreed to a high-term sentence in this case in order to take advantage of the agreed-upon disposition {even though no Circumstances in Aggravation exist or are being admitted}.]

² The defendant must be advised of the consequences of his plea. *In re Yurko* (1974) 10 Cal 3d 857. Consequences include post-conviction supervision requirements and parole periods. *In re Moser* (1993) 6 C.A. 4th 342. When advising the defendant of supervision requirements in this section of the plea script, select only the paragraphs that apply to the defendant's actual incarceration status (i.e. state prison, split sentence, probation, etc.) If the defendant is sentenced solely to local prison [county jail pursuant to PC §1170(h)] he has no supervision upon release, so must only be advised of supervision consequences if he receives a split sentence.

³ See, PC §§3000, 3000.1, See, also PC §3000.01 which allows for early dismissal from parole, but there is no requirement to advise on potential early dismissal. The maximum period is most important. Finally, PC §3000.08 covers who gets Parole and who gets PRCS and the details of PRCS. Most important to know is that only state prison inmates get parole or PRCS. No one sentenced to local prison gets either.

⁴ When a defendant agrees to a high-term sentence as part of a negotiated plea agreement, the defendant must expressly admit the truth of an aggravating circumstance and stipulate to the facts in support of that aggravated circumstance.

- Some state prison inmates receive conduct credit that reduces the actual time they spend in prison. We do not make any promises about conduct credit you might receive. In fact, no one, including your lawyer, can promise you how much conduct credit you will receive. Do you understand that you will not be allowed to withdraw your plea because you relied on a promise or representation from anyone about the conduct credits you might receive in state prison?
- [IF DEFENDANT IS PLEADING TO A LIFE CRIME (except 1st or 2nd degree Murder or Sex Crimes)]: Because you have been convicted of a life crime, once you are released from prison, you will be released on Parole for up to 5 years.]
- [IF DEFENDANT IS PLEADING TO 1st or 2nd DEGREE MURDER: Because you have been convicted of murder, if you are released from prison, you will remain on Parole for the rest of your life.]
- [IF DEFENDANT IS PLEADING TO PC 290-Registrable SEX CRIME WITH A VICTIM OVER AGE 14: Because you have been convicted of a PC 290-registrable sex crime, once you are released from prison, you will remain on Parole or PRCS for 10 years with various terms and conditions. If you abscond or violate any term or condition of Parole or PRCS, your period of supervision can be extended and you can be sentenced to county jail for up to 180 days for each violation.]
- [IF DEFENDANT IS PLEADING TO PC 290-Registrable SEX CRIME WITH A VICTIM UNDER AGE 14: Because you have been convicted of a PC 290-registrable sex crime with a victim under age 14, once you are released from prison, you will remain on Parole or PRCS for 20 years 6 months unless the Board of Parole Hearings determines it should be longer. If you abscond or violate any term or condition of Parole or PRCS, your period of supervision can be extended and you can be sentenced to county jail for up to 180 days for each violation.]
- [IF DEFENDANT IS PLEADING TO A LIFE SEX CRIME OR PC 209 BASED ON INTENT TO COMMIT A SEX CRIME WHERE THE VICTIM IS OVER AGE 14: Because you have been convicted of a life sex crime, once you are released from prison, you will remain on Parole for 10 years. If you abscond or violate any term or condition of Parole or PRCS, your period of supervision can be extended and you can be sentenced to county jail for up to 180 days for each violation.]
- [IF DEFENDANT IS PLEADING TO A LIFE SEX CRIME OR PC 209 BASED ON INTENT TO COMMIT A SEX CRIME WHERE THE VICTIM IS UNDER AGE 14: Because you have been convicted of a life sex crime, once you are released from prison, you will remain on Parole for the rest of your life.]

Split Sentence⁵

- You will receive a split sentence. After serving your term in local prison you will be released on Mandatory Supervision with various terms and conditions. If you violate any term or condition of Mandatory Supervision, you will be returned to local prison to complete the rest of your sentence.

⁵ PC §1170(h)(5)

Formal Probation⁶

- You are going to be placed on probation with various terms and conditions. If you violate any term or condition of probation you can be sent to (local prison/state prison) for (maximum term for charges pleaded ⁷ or suspended term, if execution of sentence is suspended). If you are sent to state prison, you will eventually be released on Parole or PRCS for up to 3 years with various terms and conditions. If you abscond or violate any term or condition of Parole or PRCS, you will be sent to county jail for up to 180 days for each violation.
- [IF CIRCUMSTANCES IN AGGRAVATION ARE ALLEGED: Your admission to Circumstances in Aggravation will enable the court to impose a high-term sentence on applicable charges and enhancements if you are later found to be in violation of this grant of probation.]

Search and Seizure

- As part of your (Probation/Mandatory Supervision/PRCS/Parole) you will be required to submit your person, residence, vehicle and personal belongings to search or seizure at any time of the day or night, with or without probable cause, by any law enforcement officer.
- [IF SEARCH CONDITION IS TO INCLUDE ELECTRONIC INFORMATION OR DEVICES, ADD:⁸ This search condition will also apply to your electronic information or devices, particularly [name the device(s)]. Do you give up your rights under Penal Code sections 1546 through 1546.4 and agree that your electronic device(s) can be searched?]

Violation of Current Grant of Supervision

- If you are currently on Parole, PRCS, Probation or Mandatory Supervision in any other case, your conviction today will be a violation of your other grant of supervised release. {IF THE VIOLATION IS NOT INCLUDED IN THE PLEA AGREEMENT: We make no promises about how your violation will be handled.}

Immigration

- If you are not a citizen of the United States, because of your plea today you will be deported, excluded from admission to the United States or denied naturalization.

Have you spoken to your attorney about your immigration consequences?

Has your attorney told you anything different than I have just told you?

In light of the immigration consequences I just advised you about, do you need more time to discuss this disposition with your attorney?

⁶ PC §1203 et seq.

⁷ If a negotiated plea agreement involves a suspended high-term sentence, or felony probation is otherwise granted and the presence of one or more aggravating factors gives rise to the need to preserve the possibility that a high term prison sentence may later be imposed on a violation of probation, or, on an open plea, if the court seeks to retain discretion to impose a high term sentence on a probation violation, the defendant must stipulate to a specified circumstance in aggravation and admit the factual basis for that stipulated circumstance in aggravation.

⁸ This waiver is the result of the California Electronic Communication Privacy Act (CalECPA) eff. Jan. 1, 2016. Per Special Directives 16-02 & 16-07, electronic search probation conditions should be imposed whenever electronic devices & data are integral to the crime. A probationer must waive the provisions of CalECPA to allow law enforcement & Probation to search specific electronic device(s). Some lawyers & judges may be unaware of the CalECPA requirements. Discuss it with them before taking a plea.

Knowing these immigration consequences, do you wish to plead guilty or no contest to this offense today?⁹

Firearm/ Ammunition Restriction

- This felony conviction will prohibit you from owning, using, or possessing a firearm or ammunition.

Priorability

- In the future, if you commit another crime, your conviction today may be used to make your sentence in your future case longer.
- [IF CURRENT CHARGE IS SERIOUS OR VIOLENT, ADD: The charge you are pleading to is a serious or violent crime, commonly called a strike. In the future, if you are convicted of a new felony your sentence in the new case will be doubled. If you have two serious or violent prior convictions, you may receive a life sentence if you are convicted of a 3rd offense.]

DNA

- You will be ordered to provide a DNA sample and palm and fingerprints.

Victim Restitution/Harvey Waiver

- You will be required to pay restitution to the victims in this case, including any victims whose counts are dismissed as part of this plea agreement. Do you understand that?

Specific Crimes and Registration¹⁰

Sex Crimes¹¹

- You will be required to register as a sex offender with your local police agency within 48 hours of your release from custody and within 5 days of your birthday every year. In addition, if you move your residence you must re-register within 5 days, and if you move to another city or area, you must notify the police agency where you moved from.

Arson¹²

- You will be required to register as an arson offender with your local police agency.

DUI/Watson Advisement¹³

- Driving under the influence of alcohol or drugs is extremely dangerous to human life. If, in the future, you drive under the influence of alcohol or drugs and someone is killed, you will be charged with murder.

Gangs¹⁴

- You will be required to register as a gang member with your local police agency within 10 days and if you move from your address, within 10 days of every move.

⁹ Expanded immigration advisement recommended by the Post-Conviction Litigation and Discovery Div'n.

¹⁰ H & S §11590 requiring registration for any drug conviction was repealed eff. Jan. 1, 2020

¹¹ PC §290 et seq.

¹² PC §457.1

¹³ *P v. Watson* (1981) 30 Cal. 3d 290

¹⁴ PC §186.30

Waiver of Appellate Rights

- You have the right to appeal the proceedings in this case. Do you waive and give up the right to appeal your conviction, the judgement, and any other orders previously issued by this court, including collateral attacks on your conviction or sentence at any time in the future and agree that you will not ask the court to withdraw your plea for any reason after it is entered in order to take advantage of the plea agreement offered today?¹⁵

CONCLUDING QUESTIONS

- Has anyone made you any promises besides what I have stated on the record in order to get you to change your plea?
- Has anyone threatened you or anyone close to you in order to get you to change your plea?
- Are you changing your plea freely and voluntarily because it is what you want to do?

Factual Basis¹⁶

- [ACTUAL FACTUAL BASIS] Do you admit that on (date) in Los Angeles County, you (include brief statement of facts covering all of the elements, the name of the victim or other variable information, and any enhancements, i.e., use of weapon or GBI. IF a high term is (or may in the future be) sought, Defendant must also expressly admit the facts supporting any aggravating circumstances that were admitted).
- [IF ALFORD PLEA (sometimes called, colloquially, a West plea): Are you changing your plea because after evaluating all of the facts and circumstances, you believe it is in your best interest to take advantage of what the People are {or, the Court is} offering you today?]

Taking the Plea

- Your honor, does the court have any inquiries? May I take the plea?
- Mr./Ms. (surname of defendant), in case number (XA XXXXX) to the charge of (code section) (name of crime), how do you plead? {Repeat for each count}
- [IF NO CONTEST PLEA: Do you understand when you plead no contest, the court finds you guilty and you are treated as though you are guilty for all purposes?
- [IF NGI PLEA/LOMBOY WAIVER: When you plead not guilty by reason of insanity, you will be sent to a state hospital for treatment and restoration of sanity. At regular intervals you can be brought back to court and your stay at the hospital can be extended if the court finds your sanity has not been restored. These extensions can last for the rest of your life. Do you understand?]
- [IF THERE ARE **ENHANCEMENTS**: Mr./Ms. (surname of defendant) do you admit that you (describe enhancement, i.e., used a gun, inflicted great bodily injury on the victim) pursuant to (code section).
- [IF THERE ARE **PRIORS**: Mr./Ms. (surname of defendant) do you admit that you were previously convicted on (date of conviction) of a violation of (code section) (name of crime) in (name of court, i.e., Superior Court) of (jurisdiction, i.e. Los Angeles County) in violation of (code section)? {Repeat for every prior}

¹⁵ See, *People v. Becerra* (2019) 32 Cal. App. 5th 178.

¹⁶ Choose either an actual factual basis or an *Alford (West)* plea. If you choose an *Alford (West)* plea, you *must get a stipulation to the factual basis from the defense attorney*. You take that stipulation at the end of the plea.

- [IF THERE ARE **CIRCUMSTANCES IN AGGRAVATION**: Mr./Ms. (surname of defendant) do you admit that you (describe circumstance – e.g., took advantage of a position of trust, vulnerable victim, induced a minor to participate in the crime).¹⁷
- Counsel, do you join in the waivers, concur in the plea (and admissions) and stipulate to a factual basis¹⁸ based upon the police reports, (the preliminary hearing transcript,) the probation report and any other discovery?
- The People join in the jury waiver.

Arbuckle Waiver

- You have the right to be sentenced by the same judge who heard your trial or your plea. In the event this judge is unavailable at the time of your sentencing, do you agree that any judge may sentence you?

POSTPONING PROBATION AND SENTENCING

- You have the right to be sentenced within 20 court days of your conviction. Do you understand and give up that right so that your sentencing can be set on (date)?

Cruz Waiver

- You will be released on bail {or on your own recognizance} until your sentencing. In the event you do not appear at the date of your sentencing, the promises made to you will be revoked and you can be sentenced to the maximum sentence. Do you understand?

¹⁷ See Circumstances in Aggravation Pleading Form (for reference). Circumstances should be filed in the Complaint or Information.

¹⁸ Stipulation to a factual basis is required for any negotiated *Alford* (or *West*) plea (PC §1192.5) – if the defense refuses to stipulate, go back and take an actual factual basis from the defendant.