

IN THE JUSTICE'S COURT OF THE ELKO TOWNSHIP
COUNTY OF ELKO, STATE OF NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

Defendant.

DOB
SSN

**SECOND OFFENSE
BATTERY CONSTITUTING
DOMESTIC VIOLENCE WAIVER
OF RIGHTS ON PLEA OF
EITHER GUILTY OR NO CONTEST**

I, Defendant _____ [Print Defendant's True & Correct Name], hereby plead either GUILTY or NO CONTEST [Circle Plea Being Entered] to the misdemeanor charge(s) of Second Offense Battery Constituting Domestic Violence, also known as "Second Offense Domestic Battery," as set forth in the criminal complaint on file in this case.

A. Right to Representation by a Lawyer

_____ I have the right to be represented by a lawyer at all times. If I cannot afford a lawyer, the judge will appoint one to represent me upon my request.

_____ I also have the right to represent myself without the assistance of a lawyer.

_____ I waive (give up) my right to be represented by a lawyer. I have chosen to represent myself in this case. I have made this choice even though there are the following dangers and disadvantages to self representation, among others.

- [1] Self representation is often unwise, and I may conduct it to my own detriment.
- [2] I am responsible for knowing and complying with the same procedural rules as lawyers, and cannot expect help from the judge in complying with these procedural rules.

- [3] I will not be allowed to complain on appeal about the competency or effectiveness of my self representation.
- [4] The State of Nevada is represented in this case by experienced, professional lawyers who will have the advantage of skill, training and ability.
- [5] I may allow the prosecutor an advantage, may not make effective use of legal rights, and may make tactical decisions that produce unintended consequences.
- [6] The effectiveness of my self representation may well be diminished by my dual role as lawyer and accused.

(OR, IF REPRESENTED BY A LAWYER)

_____ I have chosen to be represented by a lawyer in this case. My lawyer is _____ [Print Lawyer's Name Here]. I have signed this document after consulting with my lawyer, and I am satisfied with my lawyer.

B. Other Rights

I understand that I have the following other rights in this case. I also understand that I will be waiving (giving up) these rights if I plead either guilty or no contest to the charge(s) I face.

- _____ I have a right to a speedy, public trial.
- _____ I have the right to require the State of Nevada to prove the charge(s) against me beyond a reasonable doubt at trial.
- _____ I have the right to remain silent and refrain from incriminating myself. If I choose to remain silent, that choice cannot and will not be used against me by the judge.
- _____ I have the right to waive (give up) the right to remain silent, and testify in my own behalf in court.
- _____ I have the right to confront and cross examine (see and question) all witnesses called against me in court.
- _____ I have the right to present evidence and subpoena witnesses to testify on my behalf in court.
- _____ I have the right to appeal any conviction in this case.

C. Elements of Domestic Battery; Criminal & Civil Penalties for Domestic Battery; Restitution

I understand that Domestic Battery is comprised of the following elements, and carries the

following maximum and minimum criminal and civil penalties for a “first offense” Domestic Battery, “second offense” Domestic Battery and “felony” Domestic Battery.

_____ Domestic Battery is the willful and unlawful use of force or violence upon:

- [1] the defendant’s spouse;
- [2] the defendant’s former spouse;
- [3] any other person to whom the defendant is related by blood or marriage;
- [4] a person with whom the defendant is or was actually residing;
- [5] a person with whom the defendant has had or is having a dating relationship;
- [6] a person with whom the defendant has a child in common;
- [7] the minor child of any of these persons;
- [8] the defendant’s minor child; or
- [9] any person who has been appointed the custodian or legal guardian for the defendant’s minor child. (Applies to offenses committed on/after 10/01/07)

_____ A “first offense” Domestic Battery is a misdemeanor.

- A person convicted of first offense Domestic Battery must be sentenced to: [1] serve a jail term of at least 2 days, but not more than 6 months; [2] perform community service of at least 48 hours, but not more than 120 hours; [3] pay a fine of at least \$200.00, but not more than \$1,000.00; and [4] participate in counseling sessions of at least 1 1/2 hours per week for at least 6 months, but not more than 12 months, at his own expense.
- A person convicted of first offense Domestic Battery must also pay: [1] an administrative assessment of not more than \$115.00; [2] a court facility fee of \$10.00; and [3] a special court programs fee of \$7.00.

_____ If a person is charged with and convicted of two Domestic Batteries committed within a seven-year period, one of these convictions may be treated as a “second offense” Domestic Battery. A “second offense” Domestic Battery is a misdemeanor.

- A person convicted of second offense Domestic Battery must be sentenced to: [1] serve a jail term of at least 10 days, but not more than 6 months; [2] perform community service of at least 100 hours, but not more than 200 hours; [3] pay a fine of at least \$500.00, but not more than \$1,000.00; and [4] participate in counseling sessions of at least 1 1/2 hours per week for 12 months at his own expense.
- A person convicted of second offense Domestic Battery must also pay: [1] an administrative assessment of \$115.00; [2] a court facility fee of \$10.00; and [3] a special court programs fee of \$7.00.

_____ If I live more than 70 miles from the nearest location at which counseling services are available, the judge may allow me to participate in counseling sessions every other week for the number of months (s)he requires so long as the number of hours of counseling is not less than 6 per month.

_____ If a person is charged with and convicted of three or more Domestic Batteries committed within a seven-year period, one of these convictions may be treated as a “felony” Domestic Battery. A “felony” Domestic Battery is a category C felony.

- A person convicted of felony Domestic Battery is not eligible for probation, and is subject to be sentenced to: [1] serve a prison term of at least 1 year, but not more than 5 years; and [2] pay a fine of at not more than \$10,000.00.
- I can be charged with and convicted of felony Domestic Battery even if all prior judgments of conviction were entered as first offense Domestic Battery.

_____ Every person convicted of first offense, second offense or felony Domestic Battery must pay a domestic violence programs fee of \$35.00.

_____ I may be ordered to pay restitution in this case.

D. Other Consequences of Conviction

I understand that the following other consequences of conviction exist in this case..

_____ This conviction, and any other prior conviction from this or any other state which prohibits the same or similar conduct, may be used to enhance the penalty for a subsequent conviction.

_____ If I am convicted of “first offense,” “second offense” or “felony” Domestic Battery, my possession, shipment, transportation or receipt of a firearm or ammunition may constitute a felony pursuant to NRS 202.360 or federal law.

_____ If I am convicted of “first offense,” “second offense” or “felony” Domestic Battery at a time when I was not a U.S. citizen, I may be removed, deported or excluded from entry into the United States, or denied naturalization, in addition to other consequences defined in the federal law.

_____ If I am convicted of “first offense,” “second offense” or “felony” Domestic Battery, the judge may order me to participate in an alcohol or drug treatment program at my expense.

_____ If I am convicted of “first offense,” “second offense” or “felony” Domestic Battery, and it appears that a child under the age of 18 years may need counseling as a result of the

Domestic Battery, the judge may refer the child to an agency which provides protective services. The judge will require me to reimburse the agency for the costs of any services provided to the extent of my ability to pay for them.

E. Defendant's Entry of and Waiver of Rights on Plea of Either Guilty or No Contest

By initialing and signing this document below, I acknowledge and declare as follows.

_____ I have read this document, and/or had this document read to me in the language I understand best, and I understand the entire contents of this document.

_____ If I am pleading guilty to a charge or charges of Second Offense Domestic Battery, I agree that I did what the State claims I did wrong in the charge(s) to which I am pleading guilty, and that I have suffered the prior conviction(s) alleged.

_____ If I am pleading no contest to a charge or charges of Second Offense Domestic Battery, I agree that the State has enough evidence to prove me guilty beyond a reasonable doubt of the charge(s) to which I am pleading no contest, and that I have suffered the prior conviction(s) alleged.

_____ I was sober and in full control of my mind at the time I: [1] read this document and/or had this document read to me; [2] initialed this document; and [3] signed this document.

_____ I have not been threatened or coerced in any way to enter (make) my plea(s). I am entering (making) my plea(s) without any promises of leniency, other than those which may have been placed on the record in court.

_____ I understand that the judge is not required to follow the sentencing recommendation of either party. The judge may impose any sentence allowed by law, including the maximum (harshes) sentence.

_____ I choose to waive (give up) my rights as described in this document, except the right to be represented by a lawyer if I am represented by one in this case, and request that the Elko Justice Court accept my plea(s) of either GUILTY or NO CONTEST [Circle Plea Being Entered]. I understand the judge will sentence me on and convict me of the charge(s) to which I am entering the plea(s).

DATED this ___ day of _____, 20__.

Defendant

Witness or Lawyer

CERTIFICATE OF COUNSEL

The undersigned, as the lawyer for the defendant named herein, and as an officer of the court, hereby certifies as follows:

1. I have fully explained to the defendant the elements of and the allegations contained in any charge(s) to which either a guilty or no contest plea is/are being entered.
2. I have advised the defendant of the penalties for each charge to which either a guilty or no contest plea is being entered, and the restitution that the defendant may be ordered to pay.
3. All pleas offered by the defendant are consistent with all of the facts known to me, made with my advice to the defendant, and are in the best interest of the defendant.
4. To the best of my knowledge and belief, the defendant:
 - (a) Is competent and understands the charge(s) and the consequences of pleading either guilty or no contest.
 - (b) Will enter all pleas voluntarily.
 - (c) Was not under the influence of intoxicating liquor, a controlled substance or other drug at the time of the execution of this waiver of rights form.

DATED this ____ day of _____, 20____.

[Signature of Lawyer]

[Nevada State Bar Number]

Based upon my review of the foregoing waiver of rights form, together with my canvass of the above-named defendant in open court, I find that the defendant entered the plea(s) of guilty/no contest: [1] knowingly, intelligently and voluntarily; and [2] with full knowledge of his/her constitutional rights, the maximum and minimum penalties for the charge(s) to which a plea was entered, and the collateral consequences of conviction of the charge(s). I therefore accept the plea(s).

Justice of the Peace

Date