

5398

2009-2010 Regular Sessions

I N   A S S E M B L Y

February 13, 2009

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Introduced by M. of A. P. RIVERA -- read once and referred to the  
Committee on Codes

AN ACT to amend the criminal procedure law, in relation to requiring an  
advisement by a defense attorney regarding the possible consequences  
to an alien of the acceptance of a plea of guilty to a crime under  
state law

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-  
BLY, DO ENACT AS FOLLOWS:

1     Section 1. Legislative finding and declaration. The legislature  
2 finds and declares that in many instances involving an individual who is  
3 not a citizen of the United States charged with an offense punishable as  
4 a crime under state law, a plea of guilty is entered without the defend-  
5 ant knowing that a conviction of such offense is grounds for deporta-  
6 tion, exclusion from admission to the United States, or denial of natur-  
7 alization pursuant to the laws of the United States. Therefore, it is  
8 the intent of the legislature by enacting this act to promote fairness  
9 to such accused individuals by requiring in such cases that acceptance  
10 of a guilty plea be preceded by an appropriate warning of the special  
11 consequences for such a defendant which may result from the plea. It is  
12 also the intent of the legislature that the court in such cases shall  
13 grant the defendant a reasonable amount of time to negotiate with the  
14 prosecutor in the event the defendant or the defendant's counsel was  
15 unaware of the possibility of deportation, exclusion from admission to  
16 the United States, or denial of naturalization as a result of  
17 conviction. It is further the intent of the legislature that at the time  
18 of the plea no defendant shall be required to disclose his or her legal  
19 status to the court.

20     S 2. Subdivision 4 of section 170.10 of the criminal procedure law is  
21 amended by adding a new paragraph (e) to read as follows:

22     (E) WHERE THE ACCUSATORY INSTRUMENT IS AN INFORMATION, A PROSECUTOR'S  
23 INFORMATION OR A MISDEMEANOR COMPLAINT, PRIOR TO ACCEPTANCE OF A PLEA OF

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 GUILTY TO ANY CRIME UNDER STATE LAW, THE DEFENDANT, IN ADDITION TO ANY  
2 OTHER WARNING REQUIRED BY LAW, SHALL BE ENTITLED TO SUBSTANTIALLY THE  
3 FOLLOWING ADVISEMENT TO BE ORALLY ADMINISTERED BY HIS OR HER ATTORNEY:  
4 "IF YOU ARE NOT A CITIZEN OF THE UNITED STATES, YOU ARE HEREBY ADVISED  
5 THAT ACCEPTANCE BY THE COURT OF A PLEA OF GUILTY OR CONVICTION OF THE  
6 CRIME FOR WHICH YOU HAVE BEEN CHARGED MAY RESULT IN YOUR DEPORTATION,  
7 EXCLUSION FROM ADMISSION TO THE UNITED STATES, OR DENIAL OF NATURALIZA-  
8 TION PURSUANT TO THE LAWS OF THE UNITED STATES."

9 S 3. Section 180.10 of the criminal procedure law is amended by adding  
10 a new subdivision 7 to read as follows:

11 7. UPON ARRAIGNMENT ON A FELONY COMPLAINT, AND PRIOR TO ACCEPTANCE OF  
12 A PLEA OF GUILTY TO ANY CRIME UNDER STATE LAW, THE DEFENDANT SHALL, IN  
13 ADDITION TO ANY OTHER WARNING REQUIRED BY LAW, BE ENTITLED TO SUBSTAN-  
14 Tially THE FOLLOWING ADVISEMENT TO BE ORALLY ADMINISTERED BY HIS OR HER  
15 ATTORNEY: "IF YOU ARE NOT A CITIZEN OF THE UNITED STATES, YOU ARE HEREBY  
16 ADVISED THAT ACCEPTANCE BY THE COURT OF A PLEA OF GUILTY OR CONVICTION  
17 OF THE CRIME FOR WHICH YOU HAVE BEEN CHARGED MAY RESULT IN YOUR DEPORTA-  
18 TION, EXCLUSION FROM ADMISSION TO THE UNITED STATES, OR DENIAL OF NATUR-  
19 ALIZATION PURSUANT TO THE LAWS OF THE UNITED STATES."

20 S 4. Section 210.15 of the criminal procedure law is amended by adding  
21 a new subdivision 4 to read as follows:

22 4. UPON ARRAIGNMENT ON AN INDICTMENT, AND PRIOR TO ACCEPTANCE OF A  
23 PLEA OF GUILTY TO ANY CRIME UNDER STATE LAW, THE DEFENDANT SHALL, IN  
24 ADDITION TO ANY OTHER WARNING REQUIRED BY LAW, BE ENTITLED TO SUBSTAN-  
25 Tially THE FOLLOWING ADVISEMENT TO BE ORALLY ADMINISTERED BY HIS OR HER  
26 ATTORNEY: "IF YOU ARE NOT A CITIZEN OF THE UNITED STATES, YOU ARE HEREBY  
27 ADVISED THAT ACCEPTANCE BY THE COURT OF A PLEA OF GUILTY OR CONVICTION  
28 OF THE CRIME FOR WHICH YOU HAVE BEEN CHARGED MAY RESULT IN YOUR DEPORTA-  
29 TION, EXCLUSION FROM ADMISSION TO THE UNITED STATES, OR DENIAL OF NATUR-  
30 ALIZATION PURSUANT TO THE LAWS OF THE UNITED STATES."

31 S 5. Section 220.60 of the criminal procedure law is amended by adding  
32 two new subdivisions 5 and 6 to read as follows:

33 5. IF HIS OR HER ATTORNEY FAILS TO ADVISE THE DEFENDANT AS REQUIRED BY  
34 PARAGRAPH (E) OF SUBDIVISION FOUR OF SECTION 170.10 OR AS REQUIRED BY  
35 SUBDIVISION SEVEN OF SECTION 180.10 OR AS REQUIRED BY SUBDIVISION FOUR  
36 OF SECTION 210.15 OF THIS CHAPTER, AND THE DEFENDANT SHOWS THAT ACCEPT-  
37 ANCE OF THE PLEA OF GUILTY OR CONVICTION OF THE CRIME OR CRIMES TO WHICH  
38 DEFENDANT PLEADED GUILTY MAY HAVE THE CONSEQUENCES FOR THE DEFENDANT OF  
39 DEPORTATION, EXCLUSION FROM ADMISSION TO THE UNITED STATES, OR DENIAL OF  
40 NATURALIZATION PURSUANT TO THE LAWS OF THE UNITED STATES, THE COURT,  
41 UPON REQUEST OF THE DEFENDANT, SHALL PERMIT THE DEFENDANT TO WITHDRAW  
42 THE PLEA OF GUILTY AND ENTER A PLEA OF NOT GUILTY AT ANY TIME BEFORE THE  
43 IMPOSITION OF SENTENCE, AND IN SUCH EVENT THE ENTIRE ACCUSATORY INSTRU-  
44 MENT, AS IT EXISTED AT THE TIME OF THE PLEA OF GUILTY, IS RESTORED.

45 6. A DEFENSE ATTORNEY'S FAILURE TO PROVIDE THE ADVISEMENT REQUIRED BY  
46 THIS SECTION SHALL NOT REQUIRE THE VACATION OF JUDGMENT OR WITHDRAWAL OF  
47 THE PLEA OR CONSTITUTE GROUNDS FOR FINDING A PRIOR CONVICTION INVALID IF  
48 SUCH FAILURE OCCURRED PRIOR TO THE EFFECTIVE DATE OF THIS SUBDIVISION.  
49 NOTHING IN THIS CHAPTER, HOWEVER, SHALL BE DEEMED TO INHIBIT A COURT IN  
50 THE SOUND EXERCISE OF ITS DISCRETION, FROM VACATING A JUDGMENT OR  
51 PERMITTING A DEFENDANT TO WITHDRAW A PLEA, ACCORDING TO LAW.

52 S 6. Paragraph (h) of subdivision 1 of section 440.10 of the criminal  
53 procedure law is amended and a new paragraph (i) is added to read as  
54 follows:

55 (h) The judgment was obtained in violation of a right of the defendant  
56 under the constitution of this state or of the United States[.];

(I) THE JUDGMENT WAS ENTERED UPON A PLEA OF GUILTY AND THE DEFENSE ATTORNEY PRIOR THERETO FAILED TO ADVISE THE DEFENDANT AS REQUIRED BY PARAGRAPH (E) OF SUBDIVISION FOUR OF SECTION 170.10 OR AS REQUIRED BY SUBDIVISION SEVEN OF SECTION 180.10 OR AS REQUIRED BY SUBDIVISION FOUR OF SECTION 210.15 OF THIS CHAPTER, PROVIDED THAT THE DEFENDANT SHOWS THAT THE ENTRY OF AND ACCEPTANCE OF THE PLEA OF GUILTY MAY HAVE THE CONSEQUENCES FOR THE DEFENDANT OF DEPORTATION, EXCLUSION FROM ADMISSION TO THE UNITED STATES, OR DENIAL OF NATURALIZATION PURSUANT TO THE LAWS OF THE UNITED STATES.

S 7. Section 440.10 of the criminal procedure law is amended by adding a new subdivision 8 to read as follows:

8. UPON GRANTING THE MOTION UPON THE GROUND, AS SET FORTH IN PARAGRAPH (I) OF SUBDIVISION ONE OF THIS SECTION, THAT THE ENTRY OF AND ACCEPTANCE OF THE PLEA OF GUILTY MAY HAVE THE CONSEQUENCES FOR THE DEFENDANT OF DEPORTATION, EXCLUSION FROM ADMISSION TO THE UNITED STATES, OR DENIAL OF NATURALIZATION PURSUANT TO THE LAWS OF THE UNITED STATES, THE COURT MUST ORDER A NEW TRIAL.

S 8. The office of court administration shall develop a bill of rights and code of ethics for attorneys on how to advise aliens of the deportation consequences of a plea of guilty to a crime under state law. Such office is authorized and directed to promulgate any rule, regulation or form necessary for the implementation of this section within 180 days after the date on which this act becomes a law.

S 9. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.