S T A T E O F N E W Y O R K

4399--A

2009-2010 Regular Sessions

I N S E N A T E

April 22, 2009

Introduced by Sen. SCHNEIDERMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the criminal procedure law, in relation to requiring the court, prior to accepting a plea to a misdemeanor or violation, to advise the defendant of the risk of deportation if he or she is not a citizen

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

Section 1. Section 340.20 of the criminal procedure law is amended by adding a new subdivision 5 to read as follows:

5. PRIOR TO ACCEPTING A DEFENDANT'S PLEA OF GUILTY TO A COUNT OR COUNTS OF AN INFORMATION, AS DEFINED BY SUBDIVISION ONE OF SECTION 340.10 OF THIS ARTICLE, CHARGING A MISDEMEANOR, AS DEFINED IN SUBDIVISION TWO OF SECTION 55.10 OF THE PENAL LAW, OR A VIOLATION, AS DEFINED BY SUBDIVISION THREE OF SECTION 55.10 OF THE PENAL LAW, THE COURT SHALL ADVISE THE DEFENDANT THAT IF THE DEFENDANT IS NOT A CITIZEN OF THE UNITED STATES, THE DEFENDANT'S PLEA OF GUILTY AND THE COURT'S ACCEPTANCE THEREOF MAY RESULT IN THE DEFENDANT'S DEPORTATION OR REMOVAL, EXCLUSION FROM ADMISSION TO THE UNITED STATES OR DENIAL OF NATURALIZATION PURSUANT TO THE LAWS OF THE UNITED STATES. IN ADDITION, THE COURT SHALL, PRIOR TO ACCEPTING SUCH PLEA, ADVISE THE DEFENDANT THAT, IF THE DEFENDANT IS NOT A CITIZEN OF THE UNITED STATES AND IS OR BECOMES THE SUBJECT OF A FINAL ORDER OF REMOVAL ISSUED BY THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT, THE DEFENDANT MAY BE RELEASED TO THE CUSTODY OF THE IMMIGRATION AND CUSTOMS ENFORCEMENT FOR REMOVAL PURPOSES AS A RESULT OF THE DEFENDANT'S PLEA OF GUILTY. THE FAILURE TO ADVISE THE DEFENDANT PURSUANT TO THIS SUBDIVISION SHALL NOT BE DEEMED TO AFFECT THE VOLUNTARINESS OF A PLEA OF GUILTY OF THE VALIDITY OF A CONVICTION, NOR SHALL IT AFFORD

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

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A DEFENDANT ANY RIGHTS IN SUBSEQUENT PROCEEDING RELATING TO SUCH DEFENDANT'S DEPORTATION, EXCLUSION OR DENIAL OR NATURALIZATION. THE COURT SHALL, CONTEMPORANEOUS WITH THE PLEA, AFFIRM ON THE RECORD OR IN A WRITING THAT THE DEFENDANT HAS BEEN GIVEN THE NOTICE REQUIRED BY THIS SUBDIVISION.

S 2. This act shall take effect on the ninetieth day after it shall have become a law.