

3154

2009-2010 Regular Sessions

I N S E N A T E

March 12, 2009

Introduced by Sen. DIAZ -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to requiring an advisement by the court 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 ASSEMBLY, 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
24 GUILTY TO ANY CRIME UNDER STATE LAW, THE DEFENDANT, IN ADDITION TO ANY

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

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1 OTHER WARNING REQUIRED BY LAW, SHALL BE ENTITLED TO SUBSTANTIALLY THE
2 FOLLOWING ADVISEMENT TO BE ORALLY ADMINISTERED BY THE COURT AND PLACED
3 UPON THE RECORD: "IF YOU ARE NOT A CITIZEN OF THE UNITED STATES, YOU
4 ARE HEREBY ADVISED THAT ACCEPTANCE BY THE COURT OF A PLEA OF GUILTY OR
5 CONVICTION OF THE CRIME FOR WHICH YOU HAVE BEEN CHARGED MAY RESULT IN
6 YOUR DEPORTATION, EXCLUSION FROM ADMISSION TO THE UNITED STATES, OR
7 DENIAL OF NATURALIZATION PURSUANT TO THE LAWS OF THE UNITED STATES."
8 ABSENT A RECORD THAT THE COURT PROVIDED THE ADVISEMENT REQUIRED BY THIS
9 PARAGRAPH, THE DEFENDANT SHALL BE PRESUMED NOT TO HAVE RECEIVED THE
10 REQUIRED ADVISEMENT.

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

13 7. UPON ARRAIGNMENT ON A FELONY COMPLAINT, AND PRIOR TO ACCEPTANCE OF
14 A PLEA OF GUILTY TO ANY CRIME UNDER STATE LAW, THE DEFENDANT SHALL, IN
15 ADDITION TO ANY OTHER WARNING REQUIRED BY LAW, BE ENTITLED TO SUBSTAN-
16 Tially THE FOLLOWING ADVISEMENT TO BE ORALLY ADMINISTERED BY THE COURT
17 AND PLACED UPON THE RECORD: "IF YOU ARE NOT A CITIZEN OF THE UNITED
18 STATES, YOU ARE HEREBY ADVISED THAT ACCEPTANCE BY THE COURT OF A PLEA OF
19 GUILTY OR CONVICTION OF THE CRIME FOR WHICH YOU HAVE BEEN CHARGED MAY
20 RESULT IN YOUR DEPORTATION, EXCLUSION FROM ADMISSION TO THE UNITED
21 STATES, OR DENIAL OF NATURALIZATION PURSUANT TO THE LAWS OF THE UNITED
22 STATES." ABSENT A RECORD THAT THE COURT PROVIDED THE ADVISEMENT
23 REQUIRED BY THIS SUBDIVISION, THE DEFENDANT SHALL BE PRESUMED NOT TO
24 HAVE RECEIVED THE REQUIRED ADVISEMENT.

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

27 4. UPON ARRAIGNMENT ON AN INDICTMENT, AND PRIOR TO ACCEPTANCE OF A
28 PLEA OF GUILTY TO ANY CRIME UNDER STATE LAW, THE DEFENDANT SHALL, IN
29 ADDITION TO ANY OTHER WARNING REQUIRED BY LAW, BE ENTITLED TO SUBSTAN-
30 Tially THE FOLLOWING ADVISEMENT TO BE ORALLY ADMINISTERED BY THE COURT
31 AND PLACED UPON THE RECORD: "IF YOU ARE NOT A CITIZEN OF THE UNITED
32 STATES, YOU ARE HEREBY ADVISED THAT ACCEPTANCE BY THE COURT OF A PLEA OF
33 GUILTY OR CONVICTION OF THE CRIME FOR WHICH YOU HAVE BEEN CHARGED MAY
34 RESULT IN YOUR DEPORTATION, EXCLUSION FROM ADMISSION TO THE UNITED
35 STATES, OR DENIAL OF NATURALIZATION PURSUANT TO THE LAWS OF THE UNITED
36 STATES." ABSENT A RECORD THAT THE COURT PROVIDED THE ADVISEMENT
37 REQUIRED BY THIS SUBDIVISION, THE DEFENDANT SHALL BE PRESUMED NOT TO
38 HAVE RECEIVED THE REQUIRED ADVISEMENT.

39 S 5. This act shall take effect on the first of November next
40 succeeding the date on which it shall have become a law.