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

5443

2011-2012 Regular Sessions

I N A S S E M B L Y

February 18, 2011

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

AN ACT to amend the criminal procedure law, in relation to requiring a court advisement of possible immigration consequences to a noncitizen of pleading guilty to a state law offense

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

Section 1. Legislative finding and declaration. The legislature finds and declares that in many instances involving an individual who is not a citizen of the United States charged with an offense punishable under state law, a plea of guilty is entered without the defendant knowing that a conviction of such offense is grounds for deportation, immigration detention, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States. Therefore, it is the intent of the legislature by enacting this act to promote fairness to such accused individuals by requiring in such cases that acceptance of a guilty plea be preceded by an appropriate warning of the special consequences for such a defendant which may result from the plea. It is also the intent of the legislature that the court in such cases shall grant the defendant a reasonable amount of time to negotiate with the prosecutor in the event the defendant or the defendant's counsel was unaware of the possibility of deportation, immigration detention, exclusion from admission to the United States, or denial of naturalization as a result of conviction. It is further the intent of the legislature that at the time of the plea no defendant shall be required to disclose his or her legal status to the court.

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

(F) WHERE THE ACCUSATORY INSTRUMENT IS AN INFORMATION, A PROSECUTOR'S INFORMATION OR A MISDEMEANOR COMPLAINT, AT ARRAIGNMENT AND PRIOR TO ACCEPTANCE OF A PLEA OF GUILTY, THE COURT SHALL, IN ADDITION TO ADMINIS-

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

LBD08940-01-1

TERING ANY OTHER WARNING REQUIRED BY LAW, ADMINISTER THE FOLLOWING ADVISEMENT ON THE RECORD TO THE DEFENDANT OR IF THE COURT IS NOT A COURT OF RECORD ON A WRITING SUBSCRIBED BY THE COURT AND SIGNED BY THE DEFENDANT; "IF YOU ARE NOT A CITIZEN OF THE UNITED STATES, YOU ARE HEREBY ADVISED THAT ACCEPTANCE BY THE COURT OF A PLEA OF GUILTY OR CONVICTION OF THE OFFENSE FOR WHICH YOU HAVE BEEN CHARGED MAY RESULT IN YOUR DEPORTATION, IMMIGRATION DETENTION, EXCLUSION FROM ADMISSION TO THE UNITED STATES, OR DENIAL OF CITIZENSHIP PURSUANT TO THE LAWS OF THE UNITED STATES." THIS ADVISEMENT SHALL BE GIVEN TO ALL DEFENDANTS AND NO DEFENDANT SHALL BE REQUIRED TO DISCLOSE HIS OR HER LEGAL STATUS IN THE UNITED STATES TO THE COURT.

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

7. AT ARRAIGNMENT ON A FELONY COMPLAINT AND PRIOR TO ACCEPTANCE OF A PLEA OF GUILTY, THE COURT SHALL, IN ADDITION TO ADMINISTERING ANY OTHER WARNING REQUIRED BY LAW, ADMINISTER THE FOLLOWING ADVISEMENT ON THE RECORD TO THE DEFENDANT OR IF THE COURT IS NOT A COURT OF RECORD ON A WRITING SUBSCRIBED BY THE COURT AND SIGNED BY THE DEFENDANT; "IF YOU ARE NOT A CITIZEN OF THE UNITED STATES, YOU ARE HEREBY ADVISED THAT ACCEPTANCE BY THE COURT OF A PLEA OF GUILTY OR CONVICTION OF THE OFFENSE FOR WHICH YOU HAVE BEEN CHARGED MAY RESULT IN YOUR DEPORTATION, IMMIGRATION DETENTION, EXCLUSION FROM ADMISSION TO THE UNITED STATES, OR DENIAL OF CITIZENSHIP PURSUANT TO THE LAWS OF THE UNITED STATES." THIS ADVISEMENT SHALL BE GIVEN TO ALL DEFENDANTS AND NO DEFENDANT SHALL BE REQUIRED TO DISCLOSE HIS OR HER LEGAL STATUS IN THE UNITED STATES TO THE COURT.

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

4. AT ARRAIGNMENT ON A FELONY COMPLAINT AND PRIOR TO ACCEPTANCE OF A PLEA OF GUILTY, THE COURT SHALL, IN ADDITION TO ADMINISTERING ANY OTHER WARNING REQUIRED BY LAW, ADMINISTER THE FOLLOWING ADVISEMENT ON THE RECORD TO THE DEFENDANT OR IF THE COURT IS NOT A COURT OF RECORD ON A WRITING SUBSCRIBED BY THE COURT AND SIGNED BY THE DEFENDANT; "IF YOU ARE NOT A CITIZEN OF THE UNITED STATES, YOU ARE HEREBY ADVISED THAT ACCEPTANCE BY THE COURT OF A PLEA OF GUILTY OR CONVICTION OF THE OFFENSE FOR WHICH YOU HAVE BEEN CHARGED MAY RESULT IN YOUR DEPORTATION, IMMIGRATION DETENTION, EXCLUSION FROM ADMISSION TO THE UNITED STATES, OR DENIAL OF CITIZENSHIP PURSUANT TO THE LAWS OF THE UNITED STATES." THIS ADVISEMENT SHALL BE GIVEN TO ALL DEFENDANTS AND NO DEFENDANT SHALL BE REQUIRED TO DISCLOSE HIS OR HER LEGAL STATUS IN THE UNITED STATES TO THE COURT.

S 5. Subdivision 7 of section 220.50 of the criminal procedure law, as amended by chapter 738 of the laws of 2004, is amended to read as follows:

7. Prior to accepting a defendant's plea of guilty to [a count or counts of an indictment or a superior court information charging a felony offense] ANY OFFENSE PUNISHABLE UNDER STATE LAW, the court must advise the defendant on the record OR IF THE COURT IS NOT A COURT OF RECORD ON A WRITING SUBSCRIBED BY THE COURT AND SIGNED BY 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, IMMIGRATION DETENTION, exclusion from admission to the United States or denial of [naturalization] CITIZENSHIP pursuant to the laws of the United States. Where the plea of guilty is to a count or counts of an indictment charging a felony offense other than a violent felony offense as defined in section 70.02 of the penal law or an A-I felony offense other than an A-I felony as defined in article two hundred twenty of the penal law, the court must also, 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 deportation issued by the United States Immigration and Naturalization Service, the defendant may be paroled to the custody of the Immigration and Naturalization Service for deportation purposes at any time subsequent to the commencement of any indeterminate or determinate prison sentence imposed as a result of the defendant's plea. [The failure to advise the defendant pursuant to this subdivision shall not be deemed to affect the voluntariness of a plea of guilty or the validity of a conviction, nor shall it afford a defendant any rights in a subsequent proceeding relating to such defendant's deportation, exclusion or denial of naturalization.] THIS ADVISEMENT SHALL BE GIVEN TO ALL DEFENDANTS AND NO DEFENDANT SHALL BE REQUIRED, AT THE TIME OF THE PLEA, TO DISCLOSE HIS OR HER LEGAL STATUS IN THE UNITED STATES, TO THE COURT.

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

5. IF THE COURT FAILS TO MAKE THE ADVISEMENT PRIOR TO ACCEPTING A DEFENDANT'S PLEA OF GUILTY AS REQUIRED BY PARAGRAPH (F) OF SUBDIVISION FOUR OF SECTION 170.10, AS REQUIRED BY SUBDIVISION SEVEN OF SECTION 180.10, AS REQUIRED BY SUBDIVISION FOUR OF SECTION 210.15, OR AS REQUIRED BY SUBDIVISION SEVEN OF SECTION 220.50 OF THIS CHAPTER, AND THE DEFENDANT SHOWS THAT ACCEPTANCE OF THE PLEA OF GUILTY OR CONVICTION OF THE OFFENSE TO WHICH DEFENDANT PLEADED GUILTY MAY HAVE THE CONSEQUENCES FOR THE DEFENDANT OF DEPORTATION, IMMIGRATION DETENTION, EXCLUSION FROM ADMISSION TO THE UNITED STATES, OR DENIAL OF CITIZENSHIP PURSUANT TO THE LAWS OF THE UNITED STATES, THE COURT, UPON REQUEST OF THE DEFENDANT, SHALL PERMIT THE DEFENDANT TO WITHDRAW THE PLEA OF GUILTY AND ENTER A PLEA OF NOT GUILTY AT ANY TIME BEFORE THE IMPOSITION OF SENTENCE, AND IN SUCH EVENT THE ENTIRE ACCUSATORY INSTRUMENT, AS IT EXISTED AT THE TIME OF THE PLEA OF GUILTY, IS RESTORED.

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

S 7. Paragraph (i) of subdivision 1 of section 440.10 of the criminal procedure law, as added by chapter 332 of the laws of 2010, is amended and a new paragraph (j) is added to read as follows:

(i) The judgment is a conviction where the arresting charge was under section 240.37 (loitering for the purpose of engaging in a prostitution offense, provided that the defendant was not alleged to be loitering for the purpose of patronizing a prostitute or promoting prostitution) or 230.00 (prostitution) of the penal law, and the defendant's participation in the offense was a result of having been a victim of sex trafficking under section 230.34 of the penal law or trafficking in persons under the Trafficking Victims Protection Act (United States Code, title 22, chapter 78); provided that

(i) a motion under this paragraph shall be made with due diligence, after the defendant has ceased to be a victim of such trafficking or has sought services for victims of such trafficking, subject to reasonable concerns for the safety of the defendant, family members of the defendant, or other victims of such trafficking that may be jeopardized by the bringing of such motion, or for other reasons consistent with the purpose of this paragraph; and

(ii) official documentation of the defendant's status as a victim of sex trafficking or trafficking in persons at the time of the offense from a federal, state or local government agency shall create a presumption that the defendant's participation in the offense was a result of having been a victim of sex trafficking or trafficking in persons, but shall not be required for granting a motion under this paragraph[.];

(J) THE JUDGMENT WAS ENTERED UPON A PLEA OF GUILTY AND THE COURT PRIOR THERETO FAILED TO ADVISE THE DEFENDANT PRIOR TO ACCEPTING A DEFENDANT'S PLEA OF GUILTY AS REQUIRED BY PARAGRAPH (F) OF SUBDIVISION FOUR OF SECTION 170.10, AS REQUIRED BY SUBDIVISION SEVEN OF SECTION 180.10, AS REQUIRED BY SUBDIVISION FOUR OF SECTION 210.15, OR AS REQUIRED BY SUBDIVISION SEVEN OF SECTION 220.50 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, IMMIGRATION DETENTION, EXCLUSION FROM ADMISSION TO THE UNITED STATES, OR DENIAL OF CITIZENSHIP PURSUANT TO THE LAWS OF THE UNITED STATES.

S 8. Section 440.10 of the criminal procedure law is amended by adding a new subdivision 9 to read as follows:

9. UPON GRANTING THE MOTION UPON THE GROUND, AS SET FORTH IN PARAGRAPH (J) 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, IMMIGRATION DETENTION, EXCLUSION FROM ADMISSION TO THE UNITED STATES, OR DENIAL OF CITIZENSHIP PURSUANT TO THE LAWS OF THE UNITED STATES, THE COURT MUST VACATE THE JUDGMENT, AND PERMIT THE WITHDRAWAL OF THE GUILTY PLEA. IN SUCH EVENT, THE ENTIRE ACCUSATORY INSTRUMENT, AS IT EXISTED AT THE TIME OF THE PLEA OF GUILTY, IS RESTORED, AND THE COURT MAY TAKE SUCH OTHER ACTION AS WOULD BE APPROPRIATE UNDER SUBDIVISION FOUR OF THIS SECTION.

S 9. This act shall take effect on the first of November next succeeding the date on which it shall have become a law, provided, however, that the amendments to subdivision 7 of section 220.50 of the criminal procedure law made by section five of this act shall not affect the repeal of such subdivision and shall be deemed repealed therewith.