

1018

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

Introduced by Sen. PERALTA -- 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 a 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 (f) to read as follows:

22 (F) 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 THE COURT, ON THE
4 RECORD IN A COURT OF RECORD: "IF YOU ARE NOT A CITIZEN OF THE UNITED
5 STATES, YOU ARE HEREBY ADVISED THAT ACCEPTANCE BY THE COURT OF A PLEA OF
6 GUILTY OR CONVICTION OF THE CRIME FOR WHICH YOU HAVE BEEN CHARGED MAY
7 RESULT IN YOUR DEPORTATION, EXCLUSION FROM ADMISSION TO THE UNITED
8 STATES OR DENIAL OF NATURALIZATION PURSUANT TO THE LAWS OF THE UNITED
9 STATES." THE DEFENDANT SHALL NOT BE REQUIRED, AT THE TIME OF ENTRY OF A
10 PLEA, TO DISCLOSE TO THE COURT HIS OR HER CITIZENSHIP OR IMMIGRATION
11 STATUS. ABSENT THE PRESENCE OF THE ADVISEMENT REQUIRED BY THIS PARA-
12 GRAPH IN THE RECORD OF THE PROCEEDING IN A COURT OF RECORD, IT SHALL BE
13 PRESUMED THAT THE ADVISEMENT WAS NOT ADMINISTERED.

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

16 7. UPON ARRAIGNMENT ON A FELONY COMPLAINT, PRIOR TO ACCEPTANCE OF A
17 PLEA OF GUILTY TO ANY CRIME UNDER STATE LAW, THE DEFENDANT SHALL, IN
18 ADDITION TO ANY OTHER WARNING REQUIRED BY LAW, BE ENTITLED TO SUBSTAN-
19 Tially THE FOLLOWING ADVISEMENT TO BE ORALLY ADMINISTERED BY THE COURT
20 ON THE RECORD: "IF YOU ARE NOT A CITIZEN OF THE UNITED STATES, YOU ARE
21 HEREBY ADVISED THAT ACCEPTANCE BY THE COURT OF A PLEA OF GUILTY OR
22 CONVICTION OF THE CRIME FOR WHICH YOU HAVE BEEN CHARGED MAY RESULT IN
23 YOUR DEPORTATION, EXCLUSION FROM ADMISSION TO THE UNITED STATES OR
24 DENIAL OF NATURALIZATION PURSUANT TO THE LAWS OF THE UNITED STATES." THE
25 DEFENDANT SHALL NOT BE REQUIRED, AT THE TIME OF ENTRY OF A PLEA, TO
26 DISCLOSE TO THE COURT HIS OR HER CITIZENSHIP OR IMMIGRATION STATUS.
27 ABSENT THE PRESENCE OF THE ADVISEMENT REQUIRED BY THIS SUBDIVISION IN
28 THE RECORD OF THE PROCEEDING, IT SHALL BE PRESUMED THAT THE ADVISEMENT
29 WAS NOT ADMINISTERED.

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

32 4. UPON ARRAIGNMENT ON AN INDICTMENT, PRIOR TO ACCEPTANCE OF A PLEA OF
33 GUILTY TO ANY CRIME UNDER STATE LAW, THE DEFENDANT SHALL, IN ADDITION TO
34 ANY OTHER WARNING REQUIRED BY LAW, BE ENTITLED TO SUBSTANTIALLY THE
35 FOLLOWING ADVISEMENT TO BE ORALLY ADMINISTERED BY THE COURT ON THE
36 RECORD: "IF YOU ARE NOT A CITIZEN OF THE UNITED STATES, YOU ARE HEREBY
37 ADVISED THAT ACCEPTANCE BY THE COURT OF A PLEA OF GUILTY OR CONVICTION
38 OF THE CRIME FOR WHICH YOU HAVE BEEN CHARGED MAY RESULT IN YOUR DEPORTA-
39 TION, EXCLUSION FROM ADMISSION TO THE UNITED STATES OR DENIAL OF NATUR-
40 ALIZATION PURSUANT TO THE LAWS OF THE UNITED STATES." THE DEFENDANT
41 SHALL NOT BE REQUIRED, AT THE TIME OF ENTRY OF A PLEA, TO DISCLOSE TO
42 THE COURT HIS OR HER CITIZENSHIP OR IMMIGRATION STATUS. ABSENT THE
43 PRESENCE OF THE ADVISEMENT REQUIRED BY THIS SUBDIVISION IN THE RECORD OF
44 THE PROCEEDING, IT SHALL BE PRESUMED THAT THE ADVISEMENT WAS NOT ADMIN-
45 ISTERED.

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

49 7. Prior to accepting a defendant's plea of guilty to a count or
50 counts of an indictment or a superior court information charging a felo-
51 ny OR MISDEMEANOR offense, the court must advise the defendant on the
52 record, that if the defendant is not a citizen of the United States, the
53 defendant's plea of guilty and the court's acceptance thereof may result
54 in the defendant's deportation, exclusion from admission to the United
55 States or denial of naturalization pursuant to the laws of the United
56 States. Where the plea of guilty is to a count or counts of an indict-

1 ment charging a felony OR MISDEMEANOR offense other than a violent felo-
2 ny offense as defined in section 70.02 of the penal law or an A-I felony
3 offense other than an A-I felony as defined in article two hundred twen-
4 ty of the penal law, the court must also, prior to accepting such plea,
5 advise the defendant that, if the defendant is not a citizen of the
6 United States and is or becomes the subject of a final order of deporta-
7 tion issued by the United States Immigration and Naturalization Service,
8 the defendant may be paroled to the custody of the Immigration and
9 Naturalization Service for deportation purposes at any time subsequent
10 to the commencement of any indeterminate or determinate prison sentence
11 imposed as a result of the defendant's plea. [The failure to advise the
12 defendant pursuant to this subdivision shall not be deemed to affect the
13 voluntariness of a plea of guilty or the validity of a conviction, nor
14 shall it afford a defendant any rights in a subsequent proceeding relat-
15 ing to such defendant's deportation, exclusion or denial of naturaliza-
16 tion.]

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

19 5. IF THE COURT FAILS TO ADVISE THE DEFENDANT AND THE DEFENDANT SHOWS
20 THAT ACCEPTANCE OF THE PLEA OF GUILTY OR CONVICTION OF THE CRIME OR
21 CRIMES TO WHICH DEFENDANT PLEADED GUILTY MAY HAVE THE CONSEQUENCES FOR
22 THE DEFENDANT OF DEPORTATION, EXCLUSION FROM ADMISSION TO THE UNITED
23 STATES OR DENIAL OF NATURALIZATION PURSUANT TO THE LAWS OF THE UNITED
24 STATES, THE COURT, UPON REQUEST OF THE DEFENDANT, SHALL PERMIT THE
25 DEFENDANT TO WITHDRAW THE PLEA OF GUILTY AND ENTER A PLEA OF NOT GUILTY
26 AT ANY TIME BEFORE THE IMPOSITION OF SENTENCE, AND IN SUCH EVENT THE
27 ENTIRE ACCUSATORY INSTRUMENT, AS IT EXISTED AT THE TIME OF THE PLEA OF
28 GUILTY, SHALL BE RESTORED.

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

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

39 (i) The judgment is a conviction where the arresting charge was under
40 section 240.37 (loitering for the purpose of engaging in a prostitution
41 offense, provided that the defendant was not alleged to be loitering for
42 the purpose of patronizing a prostitute or promoting prostitution) or
43 230.00 (prostitution) of the penal law, and the defendant's partic-
44 ipation in the offense was a result of having been a victim of sex traf-
45 ficking under section 230.34 of the penal law or trafficking in persons
46 under the Trafficking Victims Protection Act (United States Code, title
47 22, chapter 78); provided that

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

55 (ii) official documentation of the defendant's status as a victim of
56 sex trafficking or trafficking in persons at the time of the offense

1 from a federal, state or local government agency shall create a presump-
2 tion that the defendant's participation in the offense was a result of
3 having been a victim of sex trafficking or trafficking in persons, but
4 shall not be required for granting a motion under this paragraph[.];

5 (J) THE JUDGMENT WAS ENTERED UPON A PLEA OF GUILTY AND THE COURT PRIOR
6 THERETO FAILED TO ADVISE THE DEFENDANT AS REQUIRED BY PARAGRAPH (F) OF
7 SUBDIVISION FOUR OF SECTION 170.10 OR AS REQUIRED BY SUBDIVISION SEVEN
8 OF SECTION 180.10 OR AS REQUIRED BY SUBDIVISION FOUR OF SECTION 210.15
9 OF THIS CHAPTER, PROVIDED THAT THE DEFENDANT SHOWS THAT THE ENTRY OF AND
10 ACCEPTANCE OF THE PLEA OF GUILTY MAY HAVE THE CONSEQUENCES FOR THE
11 DEFENDANT OF DEPORTATION, EXCLUSION FROM ADMISSION TO THE UNITED STATES,
12 OR DENIAL OF NATURALIZATION PURSUANT TO THE LAWS OF THE UNITED STATES.

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

15 9. UPON GRANTING THE MOTION UPON THE GROUND, AS SET FORTH IN PARAGRAPH
16 (J) OF SUBDIVISION ONE OF THIS SECTION, THAT THE ENTRY OF AND ACCEPTANCE
17 OF THE PLEA OF GUILTY MAY HAVE THE CONSEQUENCES FOR THE DEFENDANT OF
18 DEPORTATION, EXCLUSION FROM ADMISSION TO THE UNITED STATES OR DENIAL OF
19 NATURALIZATION PURSUANT TO THE LAWS OF THE UNITED STATES, THE COURT
20 SHALL ORDER A NEW TRIAL.

21 S 9. The office of court administration shall develop a bill of rights
22 and code of ethics for attorneys on how to advise aliens of the deporta-
23 tion consequences of a plea of guilty to a crime under state law. Such
24 office is authorized and directed to promulgate any rule, regulation or
25 form necessary for the implementation of this section within 180 days
26 after the date on which this act becomes a law.

27 S 10. This act shall take effect on the first of November next
28 succeeding the date on which it shall have become a law, provided,
29 however, that the amendments to subdivision 7 of section 220.50 of the
30 criminal procedure law made by section five of this act shall not affect
31 the repeal of such subdivision and shall be deemed repealed therewith.