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

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2011-2012 Regular Sessions

I N A S S E M B L Y

February 8, 2011

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 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 as a crime under state law, a plea of guilty is entered without the defendant knowing that a conviction of such offense is grounds for deportation, 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, 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, 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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GUILTY TO ANY CRIME UNDER STATE LAW, THE DEFENDANT, IN ADDITION TO ANY OTHER WARNING REQUIRED BY LAW, SHALL BE ENTITLED TO SUBSTANTIALLY THE FOLLOWING ADVISEMENT TO BE ORALLY ADMINISTERED BY HIS OR HER ATTORNEY: "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 CRIME FOR WHICH YOU HAVE BEEN CHARGED MAY RESULT IN YOUR DEPORTATION, EXCLUSION FROM ADMISSION TO THE UNITED STATES, OR DENIAL OF NATURALIZATION PURSUANT TO THE LAWS OF THE UNITED STATES."

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

7. UPON ARRAIGNMENT ON A FELONY COMPLAINT, AND PRIOR TO ACCEPTANCE OF A PLEA OF GUILTY TO ANY CRIME UNDER STATE LAW, THE DEFENDANT SHALL, IN ADDITION TO ANY OTHER WARNING REQUIRED BY LAW, BE ENTITLED TO SUBSTANTIALLY THE FOLLOWING ADVISEMENT TO BE ORALLY ADMINISTERED BY HIS OR HER ATTORNEY: "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 CRIME FOR WHICH YOU HAVE BEEN CHARGED MAY RESULT IN YOUR DEPORTATION, EXCLUSION FROM ADMISSION TO THE UNITED STATES, OR DENIAL OF NATURALIZATION PURSUANT TO THE LAWS OF THE UNITED STATES."

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

4. UPON ARRAIGNMENT ON AN INDICTMENT, AND PRIOR TO ACCEPTANCE OF A PLEA OF GUILTY TO ANY CRIME UNDER STATE LAW, THE DEFENDANT SHALL, IN ADDITION TO ANY OTHER WARNING REQUIRED BY LAW, BE ENTITLED TO SUBSTANTIALLY THE FOLLOWING ADVISEMENT TO BE ORALLY ADMINISTERED BY HIS OR HER ATTORNEY: "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 CRIME FOR WHICH YOU HAVE BEEN CHARGED MAY RESULT IN YOUR DEPORTATION, EXCLUSION FROM ADMISSION TO THE UNITED STATES, OR DENIAL OF NATURALIZATION PURSUANT TO THE LAWS OF THE UNITED STATES."

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

5. IF HIS OR HER ATTORNEY FAILS TO ADVISE THE DEFENDANT AS REQUIRED BY PARAGRAPH (F) 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, AND THE DEFENDANT SHOWS THAT ACCEPTANCE OF THE PLEA OF GUILTY OR CONVICTION OF THE CRIME OR CRIMES TO WHICH DEFENDANT PLEADED 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, 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 DEFENSE ATTORNEY'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 6. Subparagraph (ii) of 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:

(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[.]; OR

(J) THE JUDGMENT WAS ENTERED UPON A PLEA OF GUILTY AND THE DEFENSE ATTORNEY PRIOR THERETO FAILED TO ADVISE THE DEFENDANT AS REQUIRED BY PARAGRAPH (F) 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 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, 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.