

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

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 two new paragraphs (f) and (g) to read as follows:

22 (F) WHERE THE ACCUSATORY INSTRUMENT IS AN INFORMATION, A PROSECUTOR'S  
23 INFORMATION OR A MISDEMEANOR COMPLAINT, BEFORE ACCEPTING A PLEA OF GUIL-

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

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1 TY TO ANY OFFENSE PUNISHABLE AS A CRIME UNDER STATE LAW, THE COURT SHALL  
2 ADDRESS THE DEFENDANT PERSONALLY IN OPEN COURT, ON THE RECORD, UNDER  
3 OATH, INFORMING HIM OR HER OF AND DETERMINING THAT HE OR SHE UNDERSTANDS  
4 THE FOLLOWING: "IF YOU ARE NOT A CITIZEN OF THE UNITED STATES, YOU ARE  
5 HEREBY ADVISED THAT ACCEPTANCE BY THE COURT OF A PLEA OF GUILTY OR  
6 CONVICTION OF THE CRIME FOR WHICH YOU HAVE BEEN CHARGED MAY RESULT IN  
7 YOUR DEPORTATION, EXCLUSION FROM ADMISSION TO THE UNITED STATES, OR  
8 DENIAL OF NATURALIZATION PURSUANT TO THE LAWS OF THE UNITED STATES."  
9 ABSENT A RECORD THAT THE COURT PROVIDED THE ADVISEMENT REQUIRED BY THIS  
10 PARAGRAPH, THE DEFENDANT SHALL BE PRESUMED NOT TO HAVE RECEIVED THE  
11 REQUIRED ADVISEMENT.

12 (G) UPON REQUEST, THE COURT SHALL ALLOW THE DEFENDANT ADDITIONAL TIME  
13 TO CONSIDER THE APPROPRIATENESS OF THE PLEA IN LIGHT OF THE ADVISEMENT  
14 AS DESCRIBED IN PARAGRAPH (F) OF THIS SUBDIVISION.

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

17 7. BEFORE ACCEPTING A PLEA OF GUILTY TO ANY OFFENSE PUNISHABLE AS A  
18 CRIME UNDER STATE LAW, THE COURT SHALL ADDRESS THE DEFENDANT PERSONALLY  
19 IN OPEN COURT, ON THE RECORD, UNDER OATH, INFORMING HIM OR HER OF AND  
20 DETERMINING THAT HE OR SHE UNDERSTANDS THE FOLLOWING: "IF YOU ARE NOT A  
21 CITIZEN OF THE UNITED STATES, YOU ARE HEREBY ADVISED THAT ACCEPTANCE BY  
22 THE COURT OF A PLEA OF GUILTY OR CONVICTION OF THE CRIME FOR WHICH YOU  
23 HAVE BEEN CHARGED MAY RESULT IN YOUR DEPORTATION, EXCLUSION FROM ADMIS-  
24 SION TO THE UNITED STATES, OR DENIAL OF NATURALIZATION PURSUANT TO THE  
25 LAWS OF THE UNITED STATES." ABSENT A RECORD THAT THE COURT PROVIDED THE  
26 ADVISEMENT REQUIRED BY THIS SUBDIVISION, THE DEFENDANT SHALL BE PRESUMED  
27 NOT TO HAVE RECEIVED THE REQUIRED ADVISEMENT.

28 UPON REQUEST, THE COURT SHALL ALLOW THE DEFENDANT ADDITIONAL TIME TO  
29 CONSIDER THE APPROPRIATENESS OF THE PLEA IN LIGHT OF THE ADVISEMENT AS  
30 DESCRIBED IN PARAGRAPH (F) OF SUBDIVISION FOUR OF SECTION 170.10 OF THIS  
31 TITLE.

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

34 4. UPON ARRAIGNMENT ON AN INDICTMENT, AND PRIOR TO ACCEPTANCE OF A  
35 PLEA OF GUILTY TO ANY CRIME UNDER STATE LAW, THE DEFENDANT SHALL, IN  
36 ADDITION TO ANY OTHER WARNING REQUIRED BY LAW, BE ENTITLED TO SUBSTAN-  
37 TIALY THE FOLLOWING ADVISEMENT TO BE ORALLY ADMINISTERED BY THE COURT  
38 AND PLACED UPON THE RECORD: "IF YOU ARE NOT A CITIZEN OF THE UNITED  
39 STATES, YOU ARE HEREBY ADVISED THAT ACCEPTANCE BY THE COURT OF A PLEA OF  
40 GUILTY OR CONVICTION OF THE CRIME FOR WHICH YOU HAVE BEEN CHARGED MAY  
41 RESULT IN YOUR DEPORTATION, EXCLUSION FROM ADMISSION TO THE UNITED  
42 STATES, OR DENIAL OF NATURALIZATION PURSUANT TO THE LAWS OF THE UNITED  
43 STATES." ABSENT A RECORD THAT THE COURT PROVIDED THE ADVISEMENT  
44 REQUIRED BY THIS SUBDIVISION, THE DEFENDANT SHALL BE PRESUMED NOT TO  
45 HAVE RECEIVED THE REQUIRED ADVISEMENT. IF THE COURT FAILS TO SO ADVISE  
46 THE DEFENDANT, AND HE OR SHE LATER AT ANY TIME SHOWS THAT HIS OR HER  
47 PLEA AND CONVICTION MAY HAVE OR HAS HAD ONE OF THE ENUMERATED CONSE-  
48 QUENCES, EVEN IF THE DEFENDANT HAS ALREADY BEEN DEPORTED FROM THE UNITED  
49 STATES, THE COURT, ON THE DEFENDANT'S MOTION, SHALL VACATE THE JUDGMENT  
50 AND PERMIT THE DEFENDANT TO WITHDRAW THE PLEA OF GUILTY OR ADMISSION OR  
51 SUFFICIENT FACTS, AND ENTER A PLEA OF NOT GUILTY. ABSENT AN OFFICIAL  
52 RECORD IN THE COURT FILE THAT THE COURT PROVIDED THE ADVISEMENT AS  
53 PRESCRIBED IN THIS SECTION, THE DEFENDANT SHALL BE PRESUMED NOT TO HAVE  
54 RECEIVED ADVISEMENT. AN ADVISEMENT PREVIOUSLY OR SUBSEQUENTLY PROVIDED  
55 TO THE DEFENDANT DURING ANOTHER PLEA COLLOQUY SHALL NOT SATISFY THE  
56 ADVISEMENT REQUIRED BY THIS SECTION, NOR SHALL IT BE USED TO PRESUME THE

1 DEFENDANT UNDERSTOOD THE PLEA OF GUILTY, OR ADMISSION TO SUFFICIENT  
2 FACTS HE OR SHE SEEKS TO VACATE AND WOULD HAVE THE CONSEQUENCE OF DEPOR-  
3 TATION, REMOVAL, EXCLUSION FROM ADMISSION TO THE UNITED STATES OR DENIAL  
4 OF NATURALIZATION. NOTHING IN THIS SECTION SHALL BE CONSTRUED AS  
5 PREVENTING THE COURT, IN THE SOUND EXERCISE OF ITS DISCRETION FROM  
6 SETTING ASIDE THE JUDGMENT OF CONVICTION AND PERMITTING THE DEFENDANT TO  
7 WITHDRAW HIS OR HER PLEA. THE DEFENDANT SHALL NOT BE REQUIRED AT ANY  
8 TIME DURING THE PROCEEDINGS OR AT THE TIME OF THE PLEA TO DISCLOSE TO  
9 THE COURT HIS OR HER LEGAL STATUS IN THE UNITED STATES.

10 S 5. This act shall take effect on the first of November next succeed-  
11 ing the date on which it shall have become a law.