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

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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:

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

(F) WHERE THE ACCUSATORY INSTRUMENT IS AN INFORMATION, A PROSECUTOR'S 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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TY TO ANY OFFENSE PUNISHABLE AS A CRIME UNDER STATE LAW, THE COURT SHALL ADDRESS THE DEFENDANT PERSONALLY IN OPEN COURT, ON THE RECORD, UNDER OATH, INFORMING HIM OR HER OF AND DETERMINING THAT HE OR SHE UNDERSTANDS THE FOLLOWING: "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." ABSENT A RECORD THAT THE COURT PROVIDED THE ADVISEMENT REQUIRED BY THIS PARAGRAPH, THE DEFENDANT SHALL BE PRESUMED NOT TO HAVE RECEIVED THE REQUIRED ADVISEMENT.

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

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

7. BEFORE ACCEPTING A PLEA OF GUILTY TO ANY OFFENSE PUNISHABLE AS A CRIME UNDER STATE LAW, THE COURT SHALL ADDRESS THE DEFENDANT PERSONALLY IN OPEN COURT, ON THE RECORD, UNDER OATH, INFORMING HIM OR HER OF AND DETERMINING THAT HE OR SHE UNDERSTANDS THE FOLLOWING: "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." ABSENT A RECORD THAT THE COURT PROVIDED THE ADVISEMENT REQUIRED BY THIS SUBDIVISION, THE DEFENDANT SHALL BE PRESUMED NOT TO HAVE RECEIVED THE REQUIRED ADVISEMENT.

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

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 THE COURT AND PLACED UPON THE RECORD: "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." ABSENT A RECORD THAT THE COURT PROVIDED THE ADVISEMENT REQUIRED BY THIS SUBDIVISION, THE DEFENDANT SHALL BE PRESUMED NOT TO HAVE RECEIVED THE REQUIRED ADVISEMENT. IF THE COURT FAILS TO SO ADVISE THE DEFENDANT, AND HE OR SHE LATER AT ANY TIME SHOWS THAT HIS OR HER PLEA AND CONVICTION MAY HAVE OR HAS HAD ONE OF THE ENUMERATED CONSEQUENCES, EVEN IF THE DEFENDANT HAS ALREADY BEEN DEPORTED FROM THE UNITED STATES, THE COURT, ON THE DEFENDANT'S MOTION, SHALL VACATE THE JUDGMENT AND PERMIT THE DEFENDANT TO WITHDRAW THE PLEA OF GUILTY OR ADMISSION OR SUFFICIENT FACTS, AND ENTER A PLEA OF NOT GUILTY. ABSENT AN OFFICIAL RECORD IN THE COURT FILE THAT THE COURT PROVIDED THE ADVISEMENT AS PRESCRIBED IN THIS SECTION, THE DEFENDANT SHALL BE PRESUMED NOT TO HAVE RECEIVED ADVISEMENT. AN ADVISEMENT PREVIOUSLY OR SUBSEQUENTLY PROVIDED TO THE DEFENDANT DURING ANOTHER PLEA COLLOQUY SHALL NOT SATISFY THE ADVISEMENT REQUIRED BY THIS SECTION, NOR SHALL IT BE USED TO PRESUME THE

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

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