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2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

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 Tially 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.