

1300--A

2015-2016 Regular Sessions

I N S E N A T E

January 9, 2015

Introduced by Sen. PERALTA -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

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

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1 (F) WHERE THE ACCUSATORY INSTRUMENT IS AN INFORMATION, A PROSECUTOR'S
2 INFORMATION OR A MISDEMEANOR COMPLAINT, PRIOR TO ACCEPTANCE OF A PLEA OF
3 GUILTY TO ANY CRIME UNDER STATE LAW, THE DEFENDANT, IN ADDITION TO ANY
4 OTHER WARNING REQUIRED BY LAW, SHALL BE ENTITLED TO SUBSTANTIALLY THE
5 FOLLOWING ADVISEMENT TO BE ORALLY ADMINISTERED BY THE COURT, ON THE
6 RECORD IN A COURT OF RECORD: "IF YOU ARE NOT A CITIZEN OF THE UNITED
7 STATES, YOU ARE HEREBY ADVISED THAT ACCEPTANCE BY THE COURT OF A PLEA OF
8 GUILTY OR CONVICTION OF THE CRIME FOR WHICH YOU HAVE BEEN CHARGED MAY
9 RESULT IN YOUR DEPORTATION, EXCLUSION FROM ADMISSION TO THE UNITED
10 STATES OR DENIAL OF NATURALIZATION PURSUANT TO THE LAWS OF THE UNITED
11 STATES." THE DEFENDANT SHALL NOT BE REQUIRED, AT THE TIME OF ENTRY OF A
12 PLEA, TO DISCLOSE TO THE COURT HIS OR HER CITIZENSHIP OR IMMIGRATION
13 STATUS. ABSENT THE PRESENCE OF THE ADVISEMENT REQUIRED BY THIS PARA-
14 GRAPH IN THE RECORD OF THE PROCEEDING IN A COURT OF RECORD, IT SHALL BE
15 PRESUMED THAT THE ADVISEMENT WAS NOT ADMINISTERED; AND

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

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

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

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

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

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

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

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

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

38 S 7. Paragraph (i) of subdivision 1 of section 440.10 of the criminal
39 procedure law, as amended by chapter 368 of the laws of 2015, is amended
40 and a new paragraph (j) is added to read as follows:

41 (i) The judgment is a conviction where the arresting charge was under
42 section 240.37 (loitering for the purpose of engaging in a prostitution
43 offense, provided that the defendant was not alleged to be loitering for
44 the purpose of patronizing a person for prostitution or promoting pros-
45 titution) or 230.00 (prostitution) or 230.03 (prostitution in a school
46 zone) of the penal law, and the defendant's participation in the offense
47 was a result of having been a victim of sex trafficking under section
48 230.34 of the penal law, labor trafficking under section 135.35 of the
49 penal law, aggravated labor trafficking under section 135.37 of the
50 penal law, compelling prostitution under section 230.33 of the penal
51 law, or trafficking in persons under the Trafficking Victims Protection
52 Act (United States Code, title 22, chapter 78); provided that

53 (i) a motion under this paragraph shall be made with due diligence,
54 after the defendant has ceased to be a victim of such trafficking or
55 compelling prostitution crime or has sought services for victims of such
56 trafficking or compelling prostitution crime, subject to reasonable

1 concerns for the safety of the defendant, family members of the defend-
2 ant, or other victims of such trafficking or compelling prostitution
3 crime that may be jeopardized by the bringing of such motion, or for
4 other reasons consistent with the purpose of this paragraph; and

5 (ii) official documentation of the defendant's status as a victim of
6 trafficking, compelling prostitution or trafficking in persons at the
7 time of the offense from a federal, state or local government agency
8 shall create a presumption that the defendant's participation in the
9 offense was a result of having been a victim of sex trafficking, compel-
10 ling prostitution or trafficking in persons, but shall not be required
11 for granting a motion under this paragraph[.]; OR

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

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

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

28 S 9. The office of court administration shall develop a bill of rights
29 and code of ethics for attorneys on how to advise aliens of the deporta-
30 tion consequences of a plea of guilty to a crime under state law. Such
31 office is authorized and directed to promulgate any rule, regulation or
32 form necessary for the implementation of this section within 180 days of
33 the effective date of this act.

34 S 10. This act shall take effect on the first of November next
35 succeeding the date on which it shall have become a law, except that
36 section nine of this act shall take effect immediately; provided,
37 further, that the amendments to subdivision 7 of section 220.50 of the
38 criminal procedure law made by section five of this act shall not affect
39 the repeal of such subdivision and shall be deemed repealed therewith.