

S T A T E   O F   N E W   Y O R K

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1300--A

2015-2016 Regular Sessions

I N   S E N A T E

January 9, 2015

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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.