

STATE OF NEW YORK

9950

IN ASSEMBLY

April 26, 2024

Introduced by M. of A. CRUZ, ARDILA, COLTON -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to requiring the court, prior to accepting a plea, to advise the defendant of the risk of deportation if such defendant is not a citizen

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 7 of section 220.50 of the criminal procedure
2 law, as amended by chapter 738 of the laws of 2004, is amended to read
3 as follows:

4 7. (a) Prior to [~~accepting a defendant's plea of guilty to a count or~~
5 ~~counts of an indictment or a superior court information charging a felo-~~
6 ~~ny offense, the court must advise the defendant on the record, that if~~
7 ~~the defendant is not a citizen of the United States, the defendant's~~
8 ~~plea of guilty and the court's acceptance thereof may result in the~~
9 ~~defendant's deportation, exclusion from admission to the United States~~
10 ~~or denial of naturalization pursuant to the laws of the United States.~~
11 ~~Where the plea of guilty is to a count or counts of an indictment charg-~~
12 ~~ing a felony offense other than a violent felony offense as defined in~~
13 ~~section 70.02 of the penal law or an A-I felony offense other than an~~
14 ~~A-I felony as defined in article two hundred twenty of the penal law,~~
15 ~~the court must also, prior to accepting such plea, advise the defendant~~
16 ~~that, if the defendant is not a citizen of the United States and is or~~
17 ~~becomes the subject of a final order of deportation issued by the United~~
18 ~~States Immigration and Naturalization Service, the defendant may be~~
19 ~~paroled to the custody of the Immigration and Naturalization Service for~~
20 ~~deportation purposes at any time subsequent to the commencement of any~~
21 ~~indeterminate or determinate prison sentence imposed as a result of the~~
22 ~~defendant's plea. The failure to advise the defendant pursuant to this~~
23 ~~subdivision shall not be deemed to affect the voluntariness of a plea of~~
24 ~~guilty or the validity of a conviction, nor shall it afford a defendant~~
25 ~~any rights in a subsequent proceeding relating to such defendant's~~
26 ~~deportation, exclusion or denial of naturalization.] the defendant's
27 entry of a plea of guilty to any accusatory instrument in any criminal~~

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

LBD07452-03-4

1 action, the court shall orally give every defendant on the record the
2 following notification: "If you are not a citizen of the United States,
3 you may become deportable, ineligible for naturalization or inadmissible
4 to the United States based on a conviction by plea or verdict."

5 (i) The court shall notify every defendant in a language that the
6 defendant understands without inquiring about the defendant's citizen-
7 ship or immigration status on the record.

8 (ii) Only the court shall notify defendants about the possibility of
9 deportability, ineligibility for naturalization, or inadmissibility to
10 the United States pursuant to this paragraph. The court and the people
11 shall not make any other statements about immigration consequences,
12 including but not limited to statements regarding likely immigration
13 consequences, condition defendant's guilty plea regardless of immi-
14 gration consequences, or require waiver of any issue or claim related to
15 immigration consequences. The provisions of this subparagraph shall not
16 preclude the people from citing to this subdivision to ensure compli-
17 ance.

18 (iii) Upon request of the defendant, the court shall allow the defend-
19 ant additional time to secure counsel or consider the appropriateness of
20 the plea following the notification described in this subdivision, with
21 such plea offer remaining open.

22 (iv) Advice regarding immigration consequences given by defense coun-
23 sel does not absolve the court of its independent obligation to give the
24 notice mandated in this subdivision.

25 (v) The notification does not absolve defense counsel of their inde-
26 pendent obligation to explain the immigration consequences to the
27 defendant.

28 (vi) Nothing in this subdivision shall prohibit a court or the people
29 from considering the immigration status of a defendant in accepting
30 entry of a plea, imposing a lower sentence according to law, consenting
31 to a lesser included offense, or filing an additional accusatory instru-
32 ment.

33 (b) At the time of a defendant's arraignment, the court shall also
34 comply with paragraph (a) of this subdivision, though failure to do so
35 does not require vacatur pursuant to paragraph (c) of this subdivision.

36 (c) When a conviction or plea has potential or actual immigration
37 consequences for a defendant, (1) the court's failure to strictly comply
38 with paragraph (a) of this subdivision, on or after the effective date
39 of this subdivision, shall render the plea unknowing, involuntary, and
40 unintelligent, requiring vacatur. (2) The court's failure to have
41 substantially complied with paragraph (a) of this subdivision in any
42 felony proceeding that was pending or on direct appeal on or after
43 November nineteenth, two thousand thirteen to the effective date of this
44 subdivision shall render the plea unknowing, involuntary, and unintelli-
45 gent, requiring vacatur. An application to vacate the judgment or with-
46 draw the defendant's plea of guilty on this basis can be raised either
47 on direct appeal or at any time pursuant to a motion under paragraph (h)
48 of subdivision one of section 440.10 of this chapter.

49 (i) The term "potential or actual immigration consequences" includes
50 but is not limited to the use of the relevant penal law section in any
51 removal proceeding or adjudication under federal immigration law.

52 (ii) All records, papers, and affirmations submitted by the defendant
53 to establish that such defendant is not a United States citizen and that
54 the conviction has potential or actual immigration consequences are
55 confidential and may not be made available to any person or public or

1 private agency, except where specifically required by statute or when so
2 requested by the defendant.

3 (iii) Unless the required notification appears on the record or if no
4 record exists, the defendant shall be presumed to have not received the
5 notification from the court.

6 (iv) This remedy for the court's failure to provide the notification
7 is required notwithstanding any preservation requirement or failure to
8 object by the defendant to the court's failure to give the notification.

9 (v) This remedy for the court's failure to provide the notification is
10 required notwithstanding any prejudice requirement.

11 (d) No court may rely on the existence of a notification given under
12 this subdivision in considering whether a defendant suffered prejudice
13 or received meaningful representation under the constitution of this
14 state. Meaningful representation requires, at minimum, for defense
15 counsel to determine, advise, and negotiate effectively regarding the
16 immigration consequences of a defendant's charges, plea, or conviction.

17 § 2. This act shall take effect on the ninetieth day after it shall
18 have become a law; provided, however, that the amendments to subdivision
19 7 of section 220.50 of the criminal procedure law made by section one of
20 this act shall not affect the repeal of such subdivision and shall be
21 deemed repealed therewith.