STATE OF NEW YORK

5826

2023-2024 Regular Sessions

IN SENATE

March 17, 2023

Introduced by Sens. KAVANAGH, BROUK, HOYLMAN-SIGAL, JACKSON, MYRIE, SEPULVEDA -- 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 the court, prior to accepting a plea, to advise the defendant of the risk of deportation if he or she is not a citizen

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

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

7. **(a)** Prior to [~~accepting a defendant's plea of guilty to a count or counts of an indictment or a superior court information charging a felony offense, the court must advise the defendant on the record, that if the defendant is not a citizen of the United States, the defendant's plea of guilty and the court's acceptance thereof may result in the defendant's deportation, exclusion from admission to the United States or denial of naturalization pursuant to the laws of the United States. Where the plea of guilty is to a count or counts of an indictment charging a felony offense other than a violent felony offense as defined in section 70.02 of the penal law or an A-I felony offense other than an A-I felony as defined in article two hundred twenty of the penal law, the court must also, prior to accepting such plea, advise the defendant that, if the defendant is not a citizen of the United States and is or becomes the subject of a final order of deportation issued by the United States Immigration and Naturalization Service, the defendant may be paroled to the custody of the Immigration and Naturalization Service for deportation purposes at any time subsequent to the commencement of any indeterminate or determinate prison sentence imposed as a result of the defendant's plea. The failure to advise the defendant pursuant to this subdivision shall not be deemed to affect the voluntariness of a plea of~~

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

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~~guilty or the validity of a conviction, nor shall it afford a defendant any rights in a subsequent proceeding relating to such defendant's deportation, exclusion or denial of naturalization.~~] the defendant's entry of a plea of guilty to any accusatory instrument in any criminal action, the court shall orally give every defendant on the record the following notification: "If you are not a citizen of the United States, you may become deportable, ineligible for naturalization or inadmissible to the United States based on a conviction by plea or verdict."

(i) The court shall notify every defendant in a language that the defendant understands without inquiring about the defendant's citizenship or immigration status on the record.

(ii) Only the court shall notify defendants about the possibility of deportability, ineligibility for naturalization, or inadmissibility to the United States pursuant to this paragraph. The court and the people shall not make any other statements about immigration consequences, including but not limited to statements regarding likely immigration consequences, condition defendant's guilty plea regardless of immigration consequences, or require waiver of any issue or claim related to immigration consequences.

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

(iv) Advice regarding immigration consequences given by defense counsel does not absolve the court of its independent obligation to give the notice mandated in this subdivision.

(v) The notification does not absolve defense counsel of his or her independent obligation to explain the immigration consequences to the defendant.

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

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

(c) When a conviction or plea has potential or actual immigration consequences for a defendant, the court's failure to strictly comply with paragraph (a) of this subdivision, on or after the effective date of this subdivision, shall render the plea unknowing, involuntary, and unintelligent, requiring vacatur. The court's failure to have substantially complied with paragraph (a) of this subdivision in any non-final criminal prosecution from November nineteenth, two thousand thirteen to the effective date of this subdivision shall render the plea unknowing, involuntary, and unintelligent, requiring vacatur. An application to vacate the judgment or withdraw the defendant's plea of guilty on this basis can be raised either on direct appeal or at any time pursuant to a motion under paragraph (h) of subdivision one of section 440.10 of this chapter.

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

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

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

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

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

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

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

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