

STATE OF NEW YORK

651

2025-2026 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 8, 2025

Introduced by M. of A. KIM, HYNDMAN, SIMON, FORREST, WALKER -- Multi-Sponsored by -- M. of A. RAMOS -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to requiring an advisement by a court regarding the possible consequences to a noncitizen resident 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 finds
2 and declares that in many instances involving an individual who is not a
3 citizen of the United States charged with an offense punishable as a
4 crime under state law, a plea of guilty is entered without the defendant
5 knowing that a conviction of such offense is grounds for deportation,
6 exclusion from admission to the United States, or denial of naturaliza-
7 tion pursuant to the laws of the United States. Therefore, it is the
8 intent of the legislature by enacting this act to promote fairness to
9 such accused individuals by requiring in such cases that acceptance of a
10 guilty plea be preceded by an appropriate warning of the special conse-
11 quences for such a defendant which may result from the plea. It is also
12 the intent of the legislature that the court in such cases shall grant
13 the defendant a reasonable amount of time to negotiate with the prosecu-
14 tor in the event the defendant or the defendant's counsel was unaware of
15 the possibility of deportation, exclusion from admission to the United
16 States, or denial of naturalization as a result of conviction. It is
17 further the intent of the legislature that at the time of the plea no
18 defendant shall be required to disclose the defendant's legal status to
19 the court.
20 § 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 the defendant's citizenship or immi-
13 gration status. Absent the presence of the advisement required by this
14 paragraph in the record of the proceeding in a court of record, it shall
15 be presumed that the advisement was not administered; and

16 § 3. Section 180.10 of the criminal procedure law is amended by adding
17 a new subdivision 8 to read as follows:

18 8. 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 the defendant's 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 § 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 the defendant's 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 § 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 § 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 § 7. Paragraphs (j) and (k) of subdivision 1 of section 440.10 of the
39 criminal procedure law, paragraph (j) as amended by chapter 131 of the
40 laws of 2019 and paragraph (k) as amended by chapter 92 of the laws of
41 2021, are amended and a new paragraph (l) is added to read as follows:

42 (j) The judgment is a conviction for a class A or unclassified misde-
43 meanor entered prior to the effective date of this paragraph and satis-
44 fies the ground prescribed in paragraph (h) of this subdivision. There
45 shall be a rebuttable presumption that a conviction by plea to such an
46 offense was not knowing, voluntary and intelligent, based on ongoing
47 collateral consequences, including potential or actual immigration
48 consequences, and there shall be a rebuttable presumption that a
49 conviction by verdict constitutes cruel and unusual punishment under
50 section five of article one of the state constitution based on such
51 consequences; ~~[or]~~

52 (k) The judgment occurred prior to the effective date of the laws of
53 two thousand twenty-one that amended this paragraph and is a conviction
54 for an offense as defined in subparagraphs (i), (ii), (iii) or (iv) of
55 paragraph (k) of subdivision three of section 160.50 of this part, in
56 which case the court shall presume that a conviction by plea for the

1 aforementioned offenses was not knowing, voluntary and intelligent if it
2 has severe or ongoing consequences, including but not limited to poten-
3 tial or actual immigration consequences, and shall presume that a
4 conviction by verdict for the aforementioned offenses constitutes cruel
5 and unusual punishment under section five of article one of the state
6 constitution, based on those consequences. The people may rebut these
7 presumptions[-]; or

8 (1) The judgment was entered upon a plea of guilty and the court prior
9 thereto failed to advise the defendant as required by paragraph (f) of
10 subdivision four of section 170.10 or as required by subdivision eight
11 of section 180.10 or as required by subdivision four of section 210.15
12 of this part, provided that the defendant shows that the entry of and
13 acceptance of the plea of guilty may have the consequences for the
14 defendant of deportation, exclusion from admission to the United States,
15 or denial of naturalization pursuant to the laws of the United States.

16 § 8. Section 440.10 of the criminal procedure law is amended by adding
17 a new subdivision 10 to read as follows:

18 10. Upon granting the motion upon the ground, as set forth in para-
19 graph (1) of subdivision one of this section, that the entry of and
20 acceptance of the plea of guilty may have the consequences for the
21 defendant of deportation, exclusion from admission to the United States
22 or denial of naturalization pursuant to the laws of the United States,
23 the court shall order a new trial.

24 § 9. The office of court administration shall develop a bill of rights
25 and code of ethics for attorneys on how to advise noncitizen residents
26 of the deportation consequences of a plea of guilty to a crime under
27 state law. Such office is authorized and directed to promulgate any
28 rule, regulation or form necessary for the implementation of this
29 section within 180 days after the date on which this act becomes a law.

30 § 10. This act shall take effect on the first of November next
31 succeeding the date on which it shall have become a law, provided,
32 however, that the amendments to subdivision 7 of section 220.50 of the
33 criminal procedure law made by section five of this act shall not affect
34 the repeal of such subdivision and shall be deemed repealed therewith.