

AMENDED IN ASSEMBLY APRIL 16, 2015

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1343**

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**Introduced by Assembly Member Thurmond**

February 27, 2015

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An act to add Sections 1016.2 and 1016.3 to the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 1343, as amended, Thurmond. Criminal procedure: defense counsel.

Existing law requires the court in a noncapital case, if the defendant appears for arraignment without counsel, to inform the defendant that it is his or her right to have counsel before being arraigned and to ask the defendant if he or she desires the assistance of counsel. If the defendant desires and is unable to employ counsel, the court is required to assign counsel to defend him or her as provided. Existing law requires courts, prior to acceptance of a plea of guilty or nolo contendere by a defendant, to inform the defendant that a conviction of the offense charged may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

This bill would require defense counsel to provide accurate and affirmative advice of the potential immigration consequences of a proposed disposition and attempt to defend against those consequences. The bill would require the prosecution and defense counsel, in the interests of justice, to contemplate considering immigration

consequences in the plea negotiation process. By requiring an increased level of service, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1016.2 is added to the Penal Code, to  
2 read:

3 1016.2. The Legislature finds and declares all of the following:  
4 (a) In *Padilla v. Kentucky*, 559 U.S. 356 (2010), the United  
5 States Supreme Court held that the Sixth Amendment requires  
6 defense counsel to provide affirmative and competent advice to  
7 noncitizen defendants regarding the potential immigration  
8 consequences of their criminal cases. California courts also have  
9 held that defense counsel must investigate, advise regarding, and  
10 *attempt to* defend against, potential adverse immigration  
11 consequences of a proposed disposition (*People v. Soriano*, 194  
12 Cal.App.3d 1470 (1987), *People v. Barocio*, 216 Cal.App.3d 99  
13 (1989), *People v. Bautista*, 115 Cal.App.4th 229 (2004)).

14 (b) In *Padilla*, the United States Supreme Court sanctioned the  
15 consideration of immigration consequences by both parties in the  
16 plea negotiating process. The court stated that “informed  
17 consideration of possible deportation can only benefit both the  
18 State and noncitizen defendants during the plea-bargaining process.  
19 By bringing deportation consequences into this process, the defense  
20 and prosecution may well be able to reach agreements that better  
21 satisfy the interests of both parties.”

22 (c) In *Padilla*, the United States Supreme Court found that for  
23 noncitizens, deportation is an integral part of the penalty imposed  
24 for criminal convictions. Deportation may result from serious  
25 offenses or a single minor-conviction offense. It may be by far the  
26 most serious penalty flowing from the conviction.

1 (d) With an accurate understanding of immigration  
2 consequences, many noncitizen defendants are able to plead to a  
3 conviction and sentence that satisfy the prosecution and court, but  
4 that have no, or fewer, adverse immigration consequences than  
5 the original charge.

6 (e) Defendants who are misadvised or not advised at all of the  
7 immigration consequences of criminal charges often suffer  
8 irreparable damage to their current or potential lawful immigration  
9 status, resulting in penalties such as mandatory detention,  
10 deportation, and permanent separation from close family. In ~~many~~  
11 *some* cases, these consequences could have been avoided had  
12 counsel provided informed advice and ~~defense~~. *attempted to defend*  
13 *against such consequences.*

14 (f) Once in removal proceedings, a noncitizen may be transferred  
15 to any of over 200 immigration detention facilities across the  
16 country. Many criminal offenses trigger mandatory detention, so  
17 that the person may not request bond. In immigration proceedings,  
18 there is no court-appointed right to counsel and as a result, the  
19 majority of detained immigrants go unrepresented. Immigration  
20 judges often lack the power to consider whether the person should  
21 remain in the United States in light of equitable factors such as  
22 serious hardship to United States citizen family members, length  
23 of time living in the United States, or rehabilitation.

24 (g) The immigration consequences of criminal convictions have  
25 particularly strong impact in California. One out of every four  
26 persons living in the state is foreign-born. One out of every two  
27 children lives in a household headed by at least one foreign-born  
28 person. The majority of these children are United States citizens.  
29 It is estimated that 50,000 parents of California United States  
30 citizen children were deported in a little over two years. Once a  
31 person is deported, especially after a criminal conviction, it is  
32 extremely unlikely that he or she ever is permitted to return.

33 (h) It is the intent of the Legislature to codify *Padilla v.*  
34 *Kentucky* and *related* California case law.

35 SEC. 2. Section 1016.3 is added to the Penal Code, to read:

36 1016.3. (a) Defense counsel shall provide accurate and  
37 affirmative advice of the potential immigration consequences of  
38 a proposed disposition and attempt to defend against those  
39 consequences.

1 (b) The prosecution and defense counsel, in the interests of  
2 justice, shall contemplate considering immigration consequences  
3 in the plea negotiation process in an effort to reach a just resolution.

4 (c) This code section shall not be interpreted to change the  
5 requirements of Section 1016.5, including the requirement that no  
6 defendant shall be required to disclose his or her immigration status  
7 to the court.

8 SEC. 3. If the Commission on State Mandates determines that  
9 this act contains costs mandated by the state, reimbursement to  
10 local agencies and school districts for those costs shall be made  
11 pursuant to Part 7 (commencing with Section 17500) of Division  
12 4 of Title 2 of the Government Code.