

AMENDED IN SENATE JUNE 15, 2015

AMENDED IN ASSEMBLY APRIL 16, 2015

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1343

Introduced by Assembly Member Thurmond

February 27, 2015

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~~ *disposition, and when consistent with the goals and with the informed consent of the defendant, and with professional*

standards, to recommend and pursue available dispositions without avoidable adverse immigration consequences 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~~ *the immigration*
 12 *consequences of the available dispositions, and should, when*
 13 *consistent with the goals and informed consent of the defendant,*
 14 *and as consistent with professional standards, recommend and*
 15 *pursue available dispositions and defend against potential adverse*
 16 *immigration consequences of a proposed disposition* (People v.
 17 Soriano, 194 Cal.App.3d 1470 (1987), People v. Barocio, 216
 18 Cal.App.3d 99 (1989), People v. Bautista, 115 Cal.App.4th 229
 19 (2004)).
 20 (b) In *Padilla*, the United States Supreme Court sanctioned the
 21 consideration of immigration consequences by both parties in the

1 plea negotiating process. The court stated that “informed
2 consideration of possible deportation can only benefit both the
3 State and noncitizen defendants during the plea-bargaining process.
4 By bringing deportation consequences into this process, the defense
5 and prosecution may well be able to reach agreements that better
6 satisfy the interests of both parties.”

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

12 (d) With an accurate understanding of immigration
13 consequences, many noncitizen defendants are able to plead to a
14 conviction and sentence that satisfy the prosecution and court, but
15 that have no, or fewer, adverse immigration consequences than
16 the original charge.

17 (e) Defendants who are misadvised or not advised at all of the
18 immigration consequences of criminal charges often suffer
19 irreparable damage to their current or potential lawful immigration
20 status, resulting in penalties such as mandatory detention,
21 deportation, and permanent separation from close family. In some
22 cases, these consequences could have been avoided had counsel
23 provided informed advice and attempted to defend against such
24 consequences.

25 (f) Once in removal proceedings, a noncitizen may be transferred
26 to any of over 200 immigration detention facilities across the
27 country. Many criminal offenses trigger mandatory detention, so
28 that the person may not request bond. In immigration proceedings,
29 there is no court-appointed right to counsel and as a result, the
30 majority of detained immigrants go unrepresented. Immigration
31 judges often lack the power to consider whether the person should
32 remain in the United States in light of equitable factors such as
33 serious hardship to United States citizen family members, length
34 of time living in the United States, or rehabilitation.

35 (g) The immigration consequences of criminal convictions have
36 particularly strong impact in California. One out of every four
37 persons living in the state is foreign-born. One out of every two
38 children lives in a household headed by at least one foreign-born
39 person. The majority of these children are United States citizens.
40 It is estimated that 50,000 parents of California United States

1 citizen children were deported in a little over two years. Once a
2 person is deported, especially after a criminal conviction, it is
3 extremely unlikely that he or she ever is permitted to return.

4 (h) It is the intent of the Legislature to codify Padilla v.
5 Kentucky and related California case-law: *law and to encourage*
6 *the growth of such case law in furtherance of justice and the*
7 *findings and declarations of this section.*

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

9 1016.3. (a) Defense counsel shall provide accurate and
10 affirmative advice of the potential immigration consequences of
11 a proposed disposition and *when consistent with the goals and*
12 *with the informed consent of the defendant, and consistent with*
13 *professional standards, recommend and pursue available*
14 *dispositions without avoidable adverse immigration consequences,*
15 attempt to defend against those consequences.

16 (b) The prosecution and defense counsel, in the interests of
17 justice, *and in furtherance of the findings and declarations of*
18 *Section 1016.2,* shall contemplate considering immigration
19 consequences in the plea negotiation process in an effort to reach
20 a just resolution.

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

25 SEC. 3. If the Commission on State Mandates determines that
26 this act contains costs mandated by the state, reimbursement to
27 local agencies and school districts for those costs shall be made
28 pursuant to Part 7 (commencing with Section 17500) of Division
29 4 of Title 2 of the Government Code.