

AMENDED IN SENATE JUNE 22, 2015

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**

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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 *about the* immigration consequences

of a proposed disposition, and when consistent with the goals *of* 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~~ *standards*, defend against those consequences. The bill would require the ~~prosecution and defense counsel,~~ *prosecution*, in the interests of justice, to ~~contemplate considering~~ *consider the avoidance of adverse* immigration consequences in the plea negotiation ~~process.~~ *process as one factor in an effort to reach a just resolution.* 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,~~ *investigate and* advise  
10 ~~regarding,~~ *regarding* the immigration consequences of the available  
11 dispositions, and should, when consistent with the goals *of* and  
12 informed consent of the defendant, and as consistent with  
13 professional standards, ~~recommend and pursue available~~  
14 ~~dispositions and~~ defend against ~~potential~~ adverse immigration  
15 ~~consequences of a proposed disposition~~ *consequences* (*People v.*  
16 *Soriano*, 194 Cal.App.3d 1470 (1987), *People v. Barocio*, 216

1 Cal.App.3d 99 (1989), *People v. Bautista*, 115 Cal.App.4th 229  
2 (2004)).

3 (b) In ~~Padilla~~, *Padilla v. Kentucky*, the United States Supreme  
4 Court sanctioned the consideration of immigration consequences  
5 by both parties in the plea negotiating process. The court stated  
6 that “informed consideration of possible deportation can only  
7 benefit both the State and noncitizen defendants during the  
8 plea-bargaining process. By bringing deportation consequences  
9 into this process, the defense and prosecution may well be able to  
10 reach agreements that better satisfy the interests of both parties.”

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

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

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

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

39 (g) The immigration consequences of criminal convictions have  
40 a particularly strong impact in California. One out of every four

1 persons living in the state is foreign-born. One out of every two  
2 children lives in a household headed by at least one foreign-born  
3 person. The majority of these children are United States citizens.  
4 It is estimated that 50,000 parents of California United States  
5 citizen children were deported in a little over two years. Once a  
6 person is deported, especially after a criminal conviction, it is  
7 extremely unlikely that he or she ever is permitted to return.

8 (h) It is the intent of the Legislature to codify *Padilla v.*  
9 *Kentucky* and related California case law and to encourage the  
10 growth of such case law in furtherance of justice and the findings  
11 and declarations of this section.

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

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

21 (b) ~~The prosecution and defense counsel, prosecution,~~ in the  
22 interests of justice, and in furtherance of the findings and  
23 declarations of Section 1016.2, shall ~~contemplate considering~~  
24 ~~consider the avoidance of adverse~~ immigration consequences in  
25 the plea negotiation process *as one factor* in an effort to reach a  
26 just resolution.

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

31 SEC. 3. If the Commission on State Mandates determines that  
32 this act contains costs mandated by the state, reimbursement to  
33 local agencies and school districts for those costs shall be made  
34 pursuant to Part 7 (commencing with Section 17500) of Division  
35 4 of Title 2 of the Government Code.