

AMENDED IN SENATE JUNE 3, 2010
AMENDED IN SENATE MAY 12, 2010
AMENDED IN SENATE SEPTEMBER 4, 2009
AMENDED IN SENATE SEPTEMBER 2, 2009
AMENDED IN ASSEMBLY MAY 21, 2009
AMENDED IN ASSEMBLY APRIL 13, 2009
AMENDED IN ASSEMBLY MARCH 25, 2009
AMENDED IN ASSEMBLY FEBRUARY 26, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 15

**Introduced by Assembly Member Fuentes
(Principal coauthor: Assembly Member Smyth)**

December 1, 2008

An act to amend Section 1016.5 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 15, as amended, Fuentes. Criminal procedure: pleas.

Existing law requires the court, prior to the acceptance of a plea of guilty or nolo contendere to advise the defendant that if he or she is not a citizen, conviction of the crime charged may result in deportation, exclusion from admission to the United States, or denial of naturalization.

This bill would additionally require the court to advise the defendant that, if he or she is deported from the United States and returns illegally,

he or she could be charged with either or both of 2 separate federal offenses, as specified. The bill would make other conforming changes.

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

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

1 *SECTION 1. The Legislature finds and declares all of the*
2 *following:*

3 *(a) In Padilla v. Kentucky (2010) 130 S.Ct. 1473, the United*
4 *States Supreme Court highlighted the increased significance of*
5 *immigration consequences that are often inevitable with the making*
6 *of a guilty or nolo contendere plea.*

7 *(b) The United States Supreme Court's decision in Padilla v.*
8 *Kentucky provides evidence of the increasing importance of a*
9 *defendant's full knowledge of all immigration consequences of a*
10 *guilty or nolo contendere plea in weighing whether to enter such*
11 *a plea.*

12 *(c) Consistent with the Supreme Court's decision in Padilla v.*
13 *Kentucky, informed consideration of immigration consequences*
14 *can only benefit both the state and noncitizen defendants during*
15 *the plea-bargaining process.*

16 ~~SECTION 1.~~

17 ~~SEC. 2.~~ Section 1016.5 of the Penal Code is amended to read:

18 1016.5. (a) Prior to acceptance of a plea of guilty or nolo
19 contendere to any offense punishable as a crime under state law,
20 except offenses designated as infractions under state law, the court
21 shall administer an advisement on the record to the defendant as
22 specified in paragraphs (1) and (2).

23 (1) If the plea is accepted after January 1, 1978, the court shall
24 give the following advisement:

25

26 If you are not a citizen, you are hereby advised that conviction
27 of the offense for which you have been charged may have the
28 consequences of deportation, exclusion from admission to the
29 United States, or denial of naturalization pursuant to the laws of
30 the United States.

31

32 (2) If the plea is accepted on or after January 1, ~~2010~~ 2011, the
33 court shall give the following advisement as well:

1
2 Further, if you are deported from the United States and return
3 illegally, you could be charged with a separate federal offense for
4 illegal reentry into the United States, pursuant to Section 1325,
5 1326, or both 1325 and 1326, of Title 8 of the United States Code,
6 which impose harsh penalties.
7

8 (b) Upon request, the court shall allow the defendant additional
9 time to consider the appropriateness of the plea in light of the
10 advisement as described in this section. If, after January 1, 1978,
11 the court fails to advise the defendant as required by paragraph (1)
12 of subdivision (a) or, after January 1, ~~2010~~ 2011, fails to advise
13 the defendant as required by paragraphs (1) and (2) of subdivision
14 (a) and the defendant shows that conviction of the offense to which
15 defendant pleaded guilty or nolo contendere may have the
16 consequences for the defendant of deportation, exclusion from
17 admission to the United States, or denial of naturalization pursuant
18 to the laws of the United States, the court, on defendant's motion,
19 shall vacate the judgment and permit the defendant to withdraw
20 the plea of guilty or nolo contendere, and enter a plea of not guilty.
21 Absent a record that the court provided the advisement required
22 by this section, the defendant shall be presumed not to have
23 received the required advisement.

24 (c) With respect to a plea accepted prior to the dates specified
25 in paragraphs (1) and (2) of subdivision (a), it is not the intent of
26 the Legislature that a court's failure to provide the advisement as
27 required by subdivision (a) should require the vacation of judgment
28 and withdrawal of the plea or constitute grounds for finding a prior
29 conviction invalid. Nothing in this section, however, shall be
30 deemed to inhibit a court, in the sound exercise of its discretion,
31 from vacating a judgment and permitting a defendant to withdraw
32 a plea.

33 (d) The Legislature finds and declares that in many instances
34 involving an individual who is not a citizen of the United States
35 charged with an offense punishable as a crime under state law, a
36 plea of guilty or nolo contendere is entered without the defendant
37 knowing that a conviction of such offense is grounds for
38 deportation, exclusion from admission to the United States, or
39 denial of naturalization pursuant to the laws of the United States.
40 Therefore, it is the intent of the Legislature in enacting this section

1 to promote fairness to such accused individuals by requiring in
2 such cases that acceptance of a guilty plea or plea of nolo
3 contendere be preceded by an appropriate warning of the special
4 consequences for such a defendant which may result from the plea.
5 It is also the intent of the Legislature that the court in such cases
6 shall grant the defendant a reasonable amount of time to negotiate
7 with the prosecuting agency in the event the defendant or the
8 defendant's counsel was unaware of the possibility of deportation,
9 exclusion from admission to the United States, or denial of
10 naturalization as a result of conviction. It is further the intent of
11 the Legislature that at the time of the plea no defendant shall be
12 required to disclose his or her legal status to the court.

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