

AMENDED IN SENATE JUNE 9, 2010
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 SEC. 2. Section 1016.5 of the Penal Code is amended to read:
17 1016.5. (a) Prior to acceptance of a plea of guilty or nolo
18 contendere to any offense punishable as a crime under state law,
19 except offenses designated as infractions under state law, the court
20 shall administer an advisement on the record to the defendant as
21 specified in paragraphs (1) and (2).

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

24
25 If you are not a citizen, you are hereby advised that conviction
26 of the offense for which you have been charged may have the
27 consequences of deportation, exclusion from admission to the
28 United States, or denial of naturalization pursuant to the laws of
29 the United States.
30

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

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

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

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

35 (d) The Legislature finds and declares that in many instances
36 involving an individual who is not a citizen of the United States
37 charged with an offense punishable as a crime under state law, a
38 plea of guilty or nolo contendere is entered without the defendant
39 knowing that a conviction of ~~such~~ *that* offense is grounds for
40 deportation, exclusion from admission to the United States, or

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