

AMENDED IN ASSEMBLY MAY 20, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 806

Introduced by Assembly Member Fuentes

February 26, 2009

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

LEGISLATIVE COUNSEL'S DIGEST

AB 806, 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 a separate federal offense, 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. Section 1016.5 of the Penal Code is amended to
- 2 read:
- 3 1016.5. (a) Prior to acceptance of a plea of guilty or nolo
- 4 contendere to any offense punishable as a crime under state law,
- 5 except offenses designated as infractions under state law, the court

1 shall administer the following *an* advisement on the record to the
2 defendant: *as specified in paragraphs (1) and (2).*

3 *(1) If the plea is accepted after January 1, 1978, the court shall*
4 *give the following advisement:*

5 If you are not a citizen, you are hereby advised that conviction
6 of the offense for which you have been charged may have the
7 consequences of deportation, exclusion from admission to the
8 United States, or denial of naturalization pursuant to the laws of
9 the United States. ~~Further,~~

10 *(2) If the plea is accepted on or after January 1, 2010, the court*
11 *shall give the following advisement as well:*

12 Further, if you are deported from the United States and return
13 illegally, you could be charged with a separate federal offense for
14 illegal reentry into the United States, pursuant to Section 1325,
15 1326, or both 1325 and 1326, of Title 8 of the United States Code,
16 which impose harsh penalties.

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

33 (c) With respect to ~~pleas a plea~~ accepted prior to ~~January 1,~~
34 ~~1978 the dates specified in paragraphs (1) and (2) of subdivision~~
35 ~~(a), it is not the intent of the Legislature that a court's failure to~~
36 ~~provide the advisement as required by subdivision (a) of Section~~
37 ~~1016.5 should require the vacation of judgment and withdrawal~~
38 ~~of the plea or constitute grounds for finding a prior conviction~~
39 ~~invalid. Nothing in this section, however, shall be deemed to inhibit~~

1 a court, in the sound exercise of its discretion, from vacating a
2 judgment and permitting a defendant to withdraw a plea.

3 (d) The Legislature finds and declares that in many instances
4 involving an individual who is not a citizen of the United States
5 charged with an offense punishable as a crime under state law, a
6 plea of guilty or nolo contendere is entered without the defendant
7 knowing that a conviction of such offense is grounds for
8 deportation, exclusion from admission to the United States, or
9 denial of naturalization pursuant to the laws of the United States.
10 Therefore, it is the intent of the Legislature in enacting this section
11 to promote fairness to such accused individuals by requiring in
12 such cases that acceptance of a guilty plea or plea of nolo
13 contendere be preceded by an appropriate warning of the special
14 consequences for such a defendant which may result from the plea.
15 It is also the intent of the Legislature that the court in such cases
16 shall grant the defendant a reasonable amount of time to negotiate
17 with the prosecuting agency in the event the defendant or the
18 defendant's counsel was unaware of the possibility of deportation,
19 exclusion from admission to the United States, or denial of
20 naturalization as a result of conviction. It is further the intent of
21 the Legislature that at the time of the plea no defendant shall be
22 required to disclose his or her legal status to the court.