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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

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**Bill No:** AB 149                      **Hearing Date:** June 6, 2017  
**Author:** Jones-Sawyer  
**Version:** January 10, 2017  
**Urgency:** No                                      **Fiscal:** No  
**Consultant:** MK

**Subject:** *Criminal Procedure: Disclosure: Felony Conviction Consequences*

## HISTORY

Source: Author

Prior Legislation: AB 267 (Jones-Sawyer) Vetoed 2015  
AB 142 (Fuentes) Vetoed 2011  
AB 15 (Fuentes) Vetoed 2009  
AB 806 (Fuentes) Vetoed 2010

Support: American Civil Liberties Union of California; California Attorneys for Criminal Justice; California Catholic Conference; California Public Defenders Association; National Association of Social Workers, California Chapter

Opposition: None known

Assembly Floor Vote: 62 - 1

## PURPOSE

*The purpose of this bill is to require defense counsel to advise a defendant of various specified adverse consequences that may result from a guilty or no contest plea to a felony offense, prior to the defendant pleading guilty or no contest to a felony.*

*Existing law* requires, prior to acceptance of a plea of guilty or nolo contendere to any offense punishable as a crime under state law, the court shall administer the following advisement on the record to the defendant: “[i]f you are not a citizen, you are hereby advised that the conviction of the offense for which you have been 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. (Penal Code § 1016.5 (a).)

*Existing law* states that upon request, the court shall allow the defendant additional time to consider the appropriateness of the plea in light of the advisement as described in this section. (Penal Code § 1016.5 (b).)

*Existing law* provides if the court fails to advise the defendant as required by this section and the defendant shows that conviction of the offense to which defendant pleaded guilty or nolo contendere may have the consequences for the defendant of deportation, exclusion from admission to the United States or denial of naturalization pursuant to the laws of the United

States, the court, on defendant's motion, shall vacate the judgment and permit the defendant to withdraw the plea of guilty or nolo contendere, and enter a plea of not guilty. (Penal Code § 1016.5 (b).)

*Existing law* states that absent a record that the court provided the advisement required by this section, the defendant shall be presumed not to have received the required advisement. (Penal Code § 1016.5 (b).)

*Existing law* provides that with respect to pleas entered prior to January 1, 1978, it is not the intent of the Legislature that a court's failure to provide the required advisement should require the vacation of judgment and withdrawal of the plea or constitute grounds for finding a prior conviction invalid. (Penal Code § 1016.5 (c).)

*Existing law* finds and declares that in many instances involving an individual who is not a citizen of the United States charged with an offense punishable as a crime under state law, a plea of guilty or nolo contendere is entered without the defendant knowing that a conviction of such offense is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States. Therefore, it is the intent of the Legislature in enacting this section to promote fairness to such accused individuals by requiring in such cases that acceptance of a guilty plea or plea of nolo contendere be preceded by an appropriate warning of the special consequences for such a defendant which may result from a plea. It is also the intent of the Legislature that the court in such cases shall grant the defendant a reasonable amount of time to negotiate with the prosecuting agency in the event the defendant or the defendant's counsel was unaware of the possibility of deportation, exclusion from admission to the United States or denial of naturalization as a result of conviction. It is further the intent of the Legislature that at the time of the plea no defendant shall be required to disclose his or her legal status to the court. (Penal Code § 1016.5 (d).)

*This bill* states that prior to the defendant pleading guilty or no contest to a felony offense, defense counsel must inform the defendant that the plea of guilty or no contest may impact the following:

- a) The defendant's ability to obtain employment generally, and may make the defendant ineligible for employment in certain jobs;
- b) The loss of voting rights while incarcerated and while on parole;
- c) The eligibility of the defendant to enlist in the military;
- d) The eligibility to obtain or maintain certain state professional licenses;
- e) The eligibility to serve on a jury;
- f) The eligibility to own or possess a firearm;
- g) The eligibility for federal health care programs if the felony is related to fraud involving a federal program, patient abuse, or drugs;
- h) The eligibility for federal financial aid if the felony was committed while the defendant was receiving financial aid;

- i) The eligibility for federal cash assistance if the felony is drug related;
- j) The ability to receive Supplemental Security Income; and
- k) Legal parental and child custody rights.

*This bill* specifies that if defense counsel failed to provide this information prior to the entry of a plea prior to January 1, 2018, there is no requirement to vacate the judgment and withdraw the plea, no grounds for finding a prior conviction invalid, and does not provide grounds for appeal from the judgment.

## COMMENTS

### 1. Need for This Bill

According to the author:

According to the Harvard University Institute of Politics' Mass Incarceration Policy Group, one out of 100 adults is incarcerated, equaling more than 2.2 million Americans. The system has expanded in recent decades due to the War on Drugs, the implementation of mandatory minimum sentencing, and the prevalence of plea bargaining, a process that circumvents the Constitutional right to trial by jury. While there is a logical appeal to accept plea deals, which offer the possibility of reduced incarceration time, many individuals under arrest are routinely ill-informed about the consequences that result from pleading to a felony.

According to the New York Times, fewer than one in forty felony cases now make it to trial, as compared to 1970, when the ratio was about one in twelve. The decline has been even steeper in federal district courts. From 1986 to 2006 the ratio of pleas to trials nearly doubled, according to the Bureau of Justice.

In addition, AB 149 is not a new concept; it is simply expanding upon existing law. Currently judges are required to administer an advisement regarding possible deportation or expulsion from admission to the United States for the conviction of an offense; this bill only adds to the advisements and will inform defendants of the collateral consequences of accepting a plea and becoming a felon.

### 2. Pleas of Guilty or No Contest and the Consequences of Pleas

"Plea bargaining" refers to the resolution of a case without trial through negotiation between the prosecution and the defense.

- a) Generally

The most common form of plea bargaining is the guilty or no contest plea whereby the defendant admits guilty to the charges, or agrees to not contest the charges, thereby allowing the judge to find them guilty of one or more of the charged offenses. In accepting a plea, a court must make a finding that the guilty plea was made voluntarily, knowingly, and intelligently. *In re Johnson* (1965) 62 C2d 325; *People v Garcia* (1979)

98 CA3d Supp 14. A plea cannot be considered voluntary unless the defendant is informed of the charges pending against him or her. *People v West* (1970) 3 C3d 595.

b) Advisement of Consequences of a Guilty or No Contest Plea

Prior to the acceptance of a plea of guilty or no contest, the court must advise the defendant of the direct consequences of the plea they are accepting. *Bunnell v Superior Court* (1975) 13 Cal.3d 592, 605. Plea consequences are considered "direct" if the consequence has "a definite, immediate and largely automatic effect on the range of the defendant's punishment." *Torrey v Estelle* (1991) 54 Cal.3d 1013, 1022. In *Iowa v Tovar* (2004) 541 US 77, the Supreme Court observed that the U.S. Constitution requires the trial court to inform the accused of the "range of allowable punishments." Generally, a defendant must be advised of the following direct consequences of a guilty or no contest plea:

- i) Immigration consequences of a conviction, including deportation, exclusion from admission to the United States, or denial of naturalization. (Penal Code § 1016.5, subd. (a).); *People v Superior Court (Zamudio)* (2000) 23 Cal.4th 183; *People v Araujo* (2016) 243 Cal.App.4th 759, 763. )
- ii) The maximum parole period that the defendant might have to serve following the completion of any prison term imposed. (*In re Moser* (1993) 6 Cal.4th 342, 357; *People v Avila* (1994) 24 Cal.App.4th 1455. )
- iii) The potential maximum sentence in the case. (*In re Birch* (1973) 10 Cal.3d 314. )
- iv) Absolute or presumptive probation ineligibility. ( *People v Caban* (1983) 148 Cal.App.3d 706. )
- v) Fines, restitution fines, penalty assessments, and drug laboratory fees if applicable; *People v Villalobos* (2012) 54 Cal.4th 177, 186.
- vi) Mandatory revocation of driving privileges on a driving under the influence conviction; and ( *Corley v DMV* (1990) 222 CA3d 72, 73)
- vii) Registration requirements for the following:
  - Arson offender registration (Pen. Code § 457.1.)
  - Narcotics offender registration (Health & Saf. Code § 11590.)
  - Sex offender registration. (Pen. Code §§ 290-290.023.)

c) *Withdrawing a Plea*

At any time before judgment or within 6 months after an order granting probation, and if entry of judgment is suspended, the court may permit the withdrawal of a guilty plea and the entry of a not guilty plea on a showing of good cause. *People v Miranda* (2004) 123 CA4th 1124. "Good cause" to set aside a guilty plea is shown when the defendant demonstrates that "he or she was operating under mistake, ignorance, or any other factor overcoming the exercise of his or her free judgment, including inadvertence, fraud, or

duress." *People v Breslin* (2012) 205 CA4th 1409. Common reasons for withdrawing a guilty plea or a plea of no contest include the following:

- i) Failure to advise the defendant of constitutional rights (*People v Howard* (1992) 1 Cal.4th 1132, 1175);
- ii) Failure to specify the direct consequences of the plea (*People v Walker* (1991) 1 Cal.4th 1013, 1023);
- iii) Failure to advise a defendant of immigration consequences of a guilty plea to a particular charge (*Padilla v Kentucky* (2010) 559 US 356);
- iv) Violation of the plea bargain (*People v Mancheno* (1982) 32 Cal.3d 855, 860);
- v) Improper inducement to enter a plea (*People v Bonwit* (1985) 173 Cal.App.3d 828, 833); and,
- vi) Improper sentence contemplated (*People v Baries* (1989) 209 CA3d 313, 319).

### 3. Effect of This Legislation

Under current law, accepting a plea of guilty to any offense, the court shall inform defendants that if not a citizen, the defendant may face consequences including deportation, exclusion from admission to the United States, or denial of naturalization. As noted above case law also requires a defendant be advised about other consequences that may result from a guilty plea

This bill will require the defense counsel to inform defendants of additional consequences associated with a felony conviction before the defendant accepts a plea of guilty to a felony.

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