

SENATE THIRD READING

SB 281 (Pérez)

As Amended July 15, 2025

Majority vote

SUMMARY

Requires the immigration advisement that a court must administer before accepting a guilty plea to be administered verbatim as it appears in the statute.

Major Provisions

- 1) Requires the immigration advisement that must be administered by a court, prior to accepting a plea of guilty or nolo contendere to any crime under state law, except for infractions, to be administered verbatim as it appears in the statute.
- 2) Provides that for a plea accepted prior to January 1, 2026, it is not the intent of the Legislature that a court's failure to provide a verbatim immigration advisement, as specified, requires the vacation of judgment and withdrawal of the plea or otherwise constitutes grounds for finding a prior conviction invalid due to a failure to provide the immigration advisement, as specified, although this does not inhibit a court in the exercise of its discretion, or as otherwise required by law, from vacating a judgment and permitting a defendant to withdraw a plea as otherwise authorized by law.

COMMENTS**According to the Author**

"I'm authoring SB 281 to ensure there is consistency in California Courts when offering plea agreements. Sometimes when judges are reciting plea agreements they will switch the word 'may' to 'will.' By the slight word change from 'may' to 'will' it can greatly affect a person's understanding of the plea agreement once they enter into said agreement based on the court's interpretation of the two words. While they are similar in nature, the court's interpretation of 'may' means something is a possibility versus 'will' meaning for certain. By clarifying in statute we will create parity across the board when people are offered plea agreements. Everyone has a right to know what they are entering into."

Arguments in Support

According to the *California Attorneys for Criminal Justice*, "Penal Code section 1016.5 describes the specific immigration advisement to be given by judges in California whenever they accept a plea deal. The statute has been on the books for many years and is a key component of the legal proceeding. Unfortunately, judges have not consistently followed the actual language of the statute. Most pronounced, is the problem of judges telling individuals that there 'will' be adverse immigration consequences in every case. Not only is this incongruent with the language of section 1016.5, it also runs afoul of the clear judicial and legal doctrine that judges are not allowed to dispense legal advice to those who appear before them in court.

"By stating that there 'will' be adverse immigration consequences, instead of the statutorily described 'may,' these judges are mistakenly giving the impression that a thorough review of the applicable immigration law has taken place, and the judge has reached a legal conclusion; a

conclusion which they are not allowed to provide, and a conclusion that cannot be reached because judges have not reviewed applicable immigration law in every case that is presented before them. SB 281 achieves this goal by simply clarifying the statutory admonition is to be given 'verbatim' as described in Penal Code 1016.5 and judges cannot substitute their own language.

"Another additional concern for CACJ is that judges are unintentionally giving the impression that individuals need not seek out legal advice from their defense attorneys and/or immigration counsel to obtain specific legal advice. Immigration law is complex, ever-changing, and has many layers. For example, someone with legal permanent resident status may face adverse immigration consequences, but there may be a variety of available legal options that could be exercised in order to resolve an immigration matter without exclusion. Each case is different and it is imperative, legally required, and most effective when an individual consults appropriate legal counsel for legal advice on his/her case. SB 281 will make this clear, and ensure that judges in every courtroom in California follow the same law, in the same way."

Arguments in Opposition

According to the *Los Angeles County District Attorney's Office*, "SB 281 would mandate courts taking a plea to advise defendants verbatim of the immigration consequences language delineated in section 1016.5 of the Penal Code which says that a conviction 'may' result in their deportation, exclusion from admission, or denial of naturalization. While this bill may look innocuous with its one-word amendment, 'verbatim,' to an existing Penal Code advisement, it will have the unintended consequence of resulting in valid convictions getting reversed on appeal because defendants did not understand the immigration consequences of their guilty or no contest plea.

"There is good reason why for many years, courts and prosecutors taking pleas throughout Los Angeles, and elsewhere in the State, have advised defendants that their plea 'will' result in immigration consequences. That is because defendants who suffer immigration consequences often make a motion to vacate their plea, arguing that they did not think the advisement applied to them, and use of the 'may' language during pleas has proven problematic on appeals brought pursuant to section 1473.6 of the Penal Code.

"Proponents of this bill have argued that when judges replace the word 'may' with the word 'will,' they are giving defendants the impression that a thorough review of the applicable immigration law has taken place, and the judge has reached a legal conclusion about the immigration issues in a particular defendant's situation. They have also argued that judges are giving defendant's the impression that they don't have to seek out specific legal advice from their defense attorneys or their immigration attorneys. However, this is incorrect. Courts routinely advise defendants to speak with their attorneys about the immigration consequences of their plea.

"The Los Angeles County District Attorney's Office agrees with and fully supports the well-intentioned goal of this bill, which is to ensure that defendants entering guilty, or no contest pleas fully understand the immigration consequences of their plea. However, a verbatim recitation of the advisement in the existing statute is, and has proven to be, insufficient to satisfy this goal. To that end, we propose the following amendment to Penal Code section 1016.5:

"If you are not a citizen of the United States, your plea may have adverse immigration consequences. Before entering the plea, you should consult with your attorney, or an immigration attorney, to obtain full, accurate advice about the immigration consequences of

your plea. The court will give you time to do so if you wish. If you are unsure about the immigration consequences, you should assume that your plea will result in deportation, exclusion from the United States, or denial of naturalization or amnesty."

"Our proposed amendment strikes a fair balance between making sure defendants enter their plea with a full understanding of their rights and collateral consequences, and the public safety goal of ensuring that legitimate convictions are preserved on appeal."

FISCAL COMMENTS

Unknown. This bill is keyed non-fiscal by the Legislative Counsel.

VOTES

SENATE FLOOR: 28-10-2

YES: Allen, Archuleta, Arreguín, Ashby, Becker, Blakespear, Cabaldon, Caballero, Cervantes, Cortese, Durazo, Gonzalez, Grayson, Hurtado, Laird, McGuire, McNerney, Menjivar, Padilla, Pérez, Richardson, Rubio, Smallwood-Cuevas, Stern, Umberg, Wahab, Weber Pierson, Wiener
NO: Alvarado-Gil, Choi, Dahle, Grove, Jones, Niello, Ochoa Bogh, Seyarto, Strickland, Valladares

ABS, ABST OR NV: Limón, Reyes

ASM PUBLIC SAFETY: 7-2-0

YES: Schultz, Mark González, Haney, Harabedian, Nguyen, Ramos, Sharp-Collins

NO: Alanis, Lackey

UPDATED

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