
UNFINISHED BUSINESS

Bill No: SB 281
Author: Pérez (D), et al.
Amended: 7/15/25 in Assembly
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 5-1, 3/25/25
AYES: Arreguín, Caballero, Gonzalez, Pérez, Wiener
NOES: Seyarto

SENATE FLOOR: 28-10, 5/28/25
AYES: 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
NOES: Alvarado-Gil, Choi, Dahle, Grove, Jones, Niello, Ochoa Bogh, Seyarto,
Strickland, Valladares
NO VOTE RECORDED: Limón, Reyes

ASSEMBLY FLOOR: 53-18, 8/28/25 - See last page for vote

SUBJECT: Pleas: immigration advisement

SOURCE: California Attorneys for Criminal Justice

DIGEST: This bill requires judges to recite the statutory immigration advisement verbatim before accepting a plea.

Assembly Amendments of 7/15/25 provide that for a plea entered before January 1, 2026, it is not the Legislature's intent that a court's failure to provide a verbatim immigration advisement 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, 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.

ANALYSIS:

Existing law:

- 1) 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 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 (Pen. Code), § 1016.5, subd. (a).)
- 2) 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. (Pen. Code, § 1016.5, subd. (b).)
- 3) Provides that if the court fails to advise the defendant as required 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. (Pen. Code, § 1016.5, subd. (b).)
- 4) 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. (Pen. Code, § 1016.5, subd. (b).)

This bill:

- 1) Requires the court to administer the immigration advisement verbatim as it appears in statute.
- 2) Provides that for a plea accepted before January 1, 2026, it is not the Legislature's intent that a court's failure to provide a verbatim immigration advisement 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. 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.

Background

In *Padilla v. Kentucky* (2010), 559 U.S. 356, the United States Supreme Court held that the sixth Amendment requires defense counsel to provide affirmative and competent advice to noncitizen defendants regarding the potential immigration consequences of their criminal cases. The Supreme Court found that for noncitizens, deportation is an integral part of the penalty imposed for criminal convictions. Deportation may result from serious offenses or a single minor conviction. It may be by far the most serious penalty flowing from the conviction. (*Id.* at p. 365-366, 368.) This conforms with California court decisions, which have held that defense counsel must investigate, advise regarding, and defend against, potential adverse immigration consequences of a proposed disposition. (See *People v. Bautista* (2004) 115 Cal.App.4th 229, *People v. Barocio* (1989) 216 Cal.App.3d 99, *People v. Soriano* (1987) 194 Cal.App.3d 1470.)

In addition to defense counsel's obligation to advise a defendant of the potential immigration consequence of the plea, under current law, prior to accepting a plea, 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. (Pen. Code, § 1016.5, subd. (a).) If the advisement is not given, and the defendant shows that conviction of the offense to which they pleaded guilty or no contest may result in adverse immigration consequences, the court, on the defendant's motion, is required to vacate the judgment and allow the defendant to withdraw the plea. (*People v. Martinez* (2013) 57 Cal.4th 555, 559.) Relief will only be granted, however, if the defendant establishes prejudice – that is if they show that it was reasonably probable they would not have entered the plea if properly advised. (*Ibid.*)

“[C]riminal convictions may have ‘dire consequences’ under federal immigration law [citation] and that such consequences are ‘material matters’ [citation] for noncitizen defendants faced with pleading decisions.” (*In re Resendiz* (2001) 25 Cal.4th 230, 250; see also *Padilla v. Kentucky*, *supra*, 559 U.S. at 368.) This bill will require the court to provide the statutory immigration admonition verbatim.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 8/28/25)

ACLU California Action
California Attorneys for Criminal Justice
California Civil Liberties Advocacy
California Federation of Labor Unions, AFL-CIO
California Public Defenders Association
California State Council of Service Employees International Union
Central American Resource Center of California
Ella Baker Center for Human Rights
Friends Committee on Legislation of California
Immigrant Legal Resource Center
Local 148 LA County Public Defenders Union
Prosecutors Alliance Action
Prosecutors Alliance of California, a Project of Tides Advocacy
Secure Justice

OPPOSITION: (Verified 8/25/25)

California District Attorneys Association
Los Angeles County District Attorney's Office
Riverside County District Attorney
San Diego County District Attorney's Office

ARGUMENTS IN SUPPORT:

According to the California Attorneys for Criminal Justice, the sponsor of this bill:

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:

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. In fact, two CA Supreme Court cases prove this point.

In *People v. Patterson*, 2 Cal.5th 885, 895–97 (2017), the CA Supreme Court found that the section 1016.5 statutory advisement of “may” was insufficient to bar relief:

The question before us is whether Patterson is barred from seeking...relief on grounds of mistake or ignorance because he received the standard advisement—given to all criminal defendants in California who plead guilty to any offense other than an infraction—that his or her criminal conviction ‘may’ have adverse immigration consequences. (§ 1016.5.) We see no logical reason why the section 1016.5 advisement would operate as such a bar. A defendant entering a guilty plea may be aware that some criminal convictions may have immigration consequences as a general matter, and yet be unaware that a conviction for a specific charged offense will render the defendant subject to mandatory removal. Thus, as we have previously noted in a different context, the standard section 1016.5 advisement that a criminal conviction “may” have adverse immigration consequences “cannot be taken as placing [the defendant] on notice that, owing to his particular circumstances, he faces an actual risk of suffering such.” And for many noncitizen defendants deciding whether to plead guilty, the “actual risk” that the conviction will lead to deportation—as opposed to general awareness that a criminal conviction “may” have adverse immigration consequences—will undoubtedly be a “material matter...” that may factor heavily in the decision whether to plead guilty . . . As Judge Robert L. Hinkle explained, “Well, I know every time that I get on an airplane that it could crash, but if you tell me it's going to crash, I'm not getting on.”

Likewise, in *People v. Vivar*, 11 Cal.5th 510, 519 (2021), the Court found that initialing a plea form acknowledging that “conviction may have the consequences of deportation” was insufficient to disprove prejudice. The Court noted that sections 1473.7 and 1016.5 used the same prejudice test. *Id.* at 529. Describing the test under section 1473.7(a)(1), the Court noted:

...showing prejudicial error under section 1473.7 subdivision (a)(1) means demonstrating a reasonable probability that the defendant would have rejected the plea if the defendant had correctly understood its actual or potential immigration consequences. When courts assess whether a petitioner has shown that reasonable probability, they consider the totality of the circumstances. Factors particularly relevant to this inquiry include the defendant’s ties to the United States, the

importance the defendant placed on avoiding deportation, the defendant's priorities in seeking a plea bargain, and whether the defendant had reason to believe an immigration-neutral negotiated disposition was possible...

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...

ASSEMBLY FLOOR: 53-18, 8/28/25

AYES: Addis, Aguiar-Curry, Ahrens, Arambula, Ávila Farías, Bains, Bauer-Kahan, Bennett, Boerner, Bonta, Bryan, Calderon, Caloza, Carrillo, Connolly, Elhawary, Fong, Gabriel, Garcia, Gipson, Mark González, Haney, Harabedian, Hart, Jackson, Kalra, Lee, Lowenthal, McKinnor, Muratsuchi, Nguyen, Ortega, Papan, Patel, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Ransom, Celeste Rodriguez, Rogers, Blanca Rubio, Schiavo, Schultz, Sharp-Collins, Solache, Soria, Stefani, Ward, Wicks, Wilson, Zbur, Rivas

NOES: Alanis, Castillo, Chen, Davies, DeMaio, Dixon, Ellis, Gallagher, Jeff Gonzalez, Hadwick, Hoover, Lackey, Macedo, Patterson, Sanchez, Ta, Tangipa, Wallis

NO VOTE RECORDED: Alvarez, Berman, Flora, Irwin, Krell, Pacheco, Michelle Rodriguez, Valencia

Prepared by: Sandy Uribe / PUB. S. /
8/28/25 16:50:00

**** END ****