

SENATE COMMITTEE OF REFERENCE REPORT

Chair of Committee

Date

January 30, 2019

Committee on Judiciary.

After consideration on the merits, the Committee recommends the following:

SB19-030 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute:

3 "SECTION 1. In Colorado Revised Statutes, **add** 18-1-110.5 as
4 follows:

5 **18-1-410.5. Relief from improperly entered guilty pleas -**
6 **legislative declaration.** (1) THE GENERAL ASSEMBLY FINDS THAT:

7 (a) A CRIMINAL DEFENDANT CANNOT CHALLENGE AN
8 UNCONSTITUTIONAL GUILTY PLEA WHEN THAT PLEA HAS BEEN
9 WITHDRAWN AND THE UNDERLYING CHARGES DISMISSED FOLLOWING THE
10 SUCCESSFUL COMPLETION OF A DEFERRED JUDGMENT;

11 (b) BASED ON THE STATUTORY LANGUAGE OF SECTION 18-1.3-102,
12 TOGETHER WITH THE WRITTEN DEFERRED JUDGMENT AGREEMENT AND
13 COURT COLLOQUY THAT ACCOMPANIES SUCH AGREEMENTS, MANY
14 NONCITIZEN DEFENDANTS DID NOT UNDERSTAND THAT THE GUILTY PLEA
15 WOULD CONTINUE TO CONSTITUTE A CONVICTION FOR IMMIGRATION
16 PURPOSES AND RESULT IN ADVERSE IMMIGRATION CONSEQUENCES,
17 DESPITE THE SUBSEQUENT WITHDRAWAL OF THE GUILTY PLEA AND
18 DISMISSAL OF THE CHARGES UPON SUCCESSFUL COMPLETION OF THE
19 DEFERRED JUDGMENT; AND

20 (c) IN THE ABSENCE OF AN APPROPRIATE MECHANISM, MANY
21 NONCITIZEN DEFENDANTS HAVE BEEN UNFAIRLY DEPRIVED OF THE
22 OPPORTUNITY TO CHALLENGE GUILTY PLEAS THAT WERE ENTERED IN

1 VIOLATION OF THE CONSTITUTION OR LAWS OF THE UNITED STATES OR OF
2 THIS STATE THAT RESULTED IN ADVERSE IMMIGRATION CONSEQUENCES.

3 (2) AT ANY TIME FOLLOWING THE WITHDRAWAL OF THE GUILTY
4 PLEA AND DISMISSAL OF THE CHARGES UPON SUCCESSFUL COMPLETION OF
5 A DEFERRED JUDGMENT, A CRIMINAL DEFENDANT MAY CHALLENGE THE
6 GUILTY PLEA ON THE GROUNDS SET FORTH IN SUBSECTION (3) OF THIS
7 SECTION. THE COURT IN WHICH THE GUILTY PLEA WAS ORIGINALLY
8 ENTERED HAS JURISDICTION AND AUTHORITY TO DECIDE THE MOTION.

9 (3) A DEFENDANT MOVING TO VACATE A GUILTY PLEA THAT HAS
10 ALREADY BEEN WITHDRAWN FOLLOWING THE SUCCESSFUL COMPLETION
11 OF A DEFERRED JUDGMENT MUST, IN GOOD FAITH, ALLEGE THE
12 FOLLOWING:

13 (a) AS A RESULT OF THE GUILTY PLEA, THE DEFENDANT HAS
14 SUFFERED, IS CURRENTLY SUFFERING, OR WILL SUFFER, AN ADVERSE
15 IMMIGRATION CONSEQUENCE; AND

16 (b) THE GUILTY PLEA WAS OBTAINED IN VIOLATION OF THE
17 CONSTITUTION OR LAWS OF THE UNITED STATES OR OF THIS STATE UNDER
18 ONE OR MORE OF THE FOLLOWING GROUNDS:

19 (I) THE DEFENDANT WAS NOT INFORMED THAT THE GUILTY PLEA
20 WOULD CONTINUE TO RESULT IN ADVERSE IMMIGRATION CONSEQUENCES
21 DESPITE THE SUBSEQUENT WITHDRAWAL OF THE GUILTY PLEA AND
22 DISMISSAL OF THE CHARGES WITH PREJUDICE;

23 (II) THE DEFENDANT WAS NOT ADEQUATELY ADVISED OF THE
24 IMMIGRATION CONSEQUENCES OF THE GUILTY PLEA; OR

25 (III) THE GUILTY PLEA WAS CONSTITUTIONALLY INFIRM FOR ANY
26 OTHER REASON SET FORTH IN SECTION 18-1-410 (1).

27 (4) (a) UPON RECEIPT OF THE MOTION, THE COURT SHALL DIRECT
28 THE PROSECUTION TO RESPOND WITHIN TWENTY-ONE DAYS OR REQUEST
29 ADDITIONAL TIME FOR GOOD CAUSE SHOWN. IF A RESPONSE IS NOT FILED,
30 THE MOTION IS DEEMED UNOPPOSED, AND THE COURT SHALL GRANT THE
31 MOTION. IF THE PROSECUTION OPPOSES THE MOTION, IT SHALL ALLEGE, IN
32 GOOD FAITH, THE FACTS UPON WHICH IT BASES ITS OPPOSITION. IF THE
33 RESPONSE RAISES AN ISSUE OF MATERIAL FACT, THE COURT SHALL SET THE
34 MATTER FOR AN EVIDENTIARY HEARING.

35 (b) UNLESS THE PROSECUTION PROVES BY A PREPONDERANCE OF
36 THE EVIDENCE THAT THE DEFENDANT WILL NOT SUFFER AN IMMIGRATION
37 CONSEQUENCE OR THAT THE GUILTY PLEA WAS CONSTITUTIONALLY
38 ENTERED, THE COURT SHALL GRANT THE MOTION.

39 (c) FOR CLAIMS RAISED PURSUANT TO SUBSECTION (3)(b)(I) OF
40 THIS SECTION, THE PROSECUTION CAN NEITHER RAISE AN ISSUE OF
41 MATERIAL FACT TO OBTAIN AN EVIDENTIARY HEARING NOR DEFEAT A

1 CLAIM AT THE HEARING BY RELYING ON WRITTEN DOCUMENTS, SUCH AS A
2 DEFERRED JUDGMENT AGREEMENT, PLEA PAPERWORK, OR TRANSCRIPT OF
3 A COURT COLLOQUY, UNLESS THOSE DOCUMENTS CLEARLY SHOW THAT
4 THE DEFENDANT WAS INFORMED THAT THE IMMIGRATION CONSEQUENCES
5 RESULTING FROM A GUILTY PLEA WOULD REMAIN DESPITE THE
6 SUBSEQUENT WITHDRAWAL OF THAT GUILTY PLEA AND THE DISMISSAL OF
7 THE CHARGES WITH PREJUDICE.

8 (5) IF THE DEFENDANT SUCCEEDS IN CHALLENGING A GUILTY PLEA
9 UNDER SUBSECTION (3) OF THIS SECTION, THE COURT SHALL VACATE THE
10 GUILTY PLEA AS CONSTITUTIONALLY INFIRM. THE ORDER CONSTITUTES AN
11 ADDITIONAL INDEPENDENT BASIS FOR THE VACATUR OF THE GUILTY PLEA
12 AND DOES NOT RESULT IN THE REINSTATEMENT OF CHARGES.

13 **SECTION 2. Applicability.** This act applies to charges dismissed
14 before, on, or after the effective date of this act.

15 **SECTION 3. Safety clause.** The general assembly hereby finds,
16 determines, and declares that this act is necessary for the immediate
17 preservation of the public peace, health, and safety.".

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