

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 19-0422.02 Jerry Barry x4341

SENATE BILL 19-030

SENATE SPONSORSHIP

Gonzales,

HOUSE SPONSORSHIP

(None),

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 **CONCERNING A REMEDY FOR IMPROPERLY ENTERED GUILTY PLEAS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill finds that some criminal defendants who, when they entered a guilty plea in connection with a deferred judgment, were not advised that there may be additional penalties that attach to the plea even if the plea is later withdrawn and the case is dismissed. These defendants did not knowingly, intelligently, and voluntarily enter the plea of guilty as required by law. The bill authorizes these persons to petition the court for an order vacating the guilty plea.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 18-1.3-102, **add** (5)
3 as follows:

4 **18-1.3-102. Deferred sentencing of defendant - legislative**
5 **declaration.** (5) (a) THE GENERAL ASSEMBLY FINDS THAT MOST
6 DEFENDANTS SIGNED A WRITTEN STIPULATION AND ENTERED A PLEA OF
7 GUILTY PURSUANT TO SUBSECTION (2) OF THIS SECTION WHO WERE NOT
8 INFORMED THAT EVEN THOUGH THE GUILTY PLEA WOULD BE WITHDRAWN
9 AND THE CASE DISMISSED WITH PREJUDICE, THE MERE ENTERING OF THE
10 PLEA COULD STILL RESULT IN PENALTIES, INCLUDING ADVERSE
11 IMMIGRATION CONSEQUENCES. THE GENERAL ASSEMBLY RECOGNIZES
12 THAT WHEN THOSE PENALTIES ATTACHED TO A PLEA NOTWITHSTANDING
13 THE SUBSEQUENT WITHDRAWAL OF THE PLEA AND DISMISSAL OF THE
14 CHARGES, THE STATUTORY LANGUAGE DESCRIBING THE OPERATION OF A
15 DEFERRED JUDGMENT AND SENTENCE, AND THE ASSOCIATED FORMS AND
16 COURT COLLOQUIES RELATED TO THE ENTRY OF THE PLEA, RESULTED IN A
17 FAILURE TO PROPERLY APPRISE THE DEFENDANT OF THE PENALTY
18 ASSOCIATED WITH THE PLEA. THEREFORE, THE RECORD IN THOSE CASES
19 DOES NOT DEMONSTRATE, AS REQUIRED BY THE UNITED STATES
20 CONSTITUTION, THE COLORADO CONSTITUTION, AND THE COLORADO
21 RULES OF CRIMINAL PROCEDURE, THAT THE DEFENDANT KNOWINGLY,
22 INTELLIGENTLY, AND VOLUNTARILY ENTERED THE PLEA OF GUILTY.

23 (b) A DEFENDANT WHO HAS ENTERED A PLEA OF GUILTY THAT HAS
24 BEEN WITHDRAWN AND THE CHARGES AND SENTENCE DISMISSED WITH
25 PREJUDICE MAY, AT ANY TIME, PETITION THE COURT FOR AN ORDER
26 VACATING THE PLEA ON THE GROUNDS THAT THE RECORD DOES NOT

1 DEMONSTRATE THAT THE DEFENDANT WAS APPRISED OF ALL PENALTIES
2 ASSOCIATED WITH THE GUILTY PLEA. THE COURT SHALL GRANT THE
3 PETITION AND ORDER THAT THE PLEA IS VACATED AS A VIOLATION OF THE
4 UNITED STATES CONSTITUTION, THE COLORADO CONSTITUTION, AND THE
5 COLORADO RULES OF CRIMINAL PROCEDURE IF THE COURT IS SATISFIED
6 THAT THE DEFENDANT WOULD SUFFER A PENALTY FROM THE GUILTY PLEA,
7 UNLESS THE RECORD AFFIRMATIVELY AND UNEQUIVOCALLY
8 DEMONSTRATES THAT THE DEFENDANT WAS ADVISED, AT THE TIME THAT
9 THE DEFENDANT ENTERED THE PLEA, THAT THE PENALTY WOULD REMAIN
10 DESPITE THE SUBSEQUENT WITHDRAWAL OF THE PLEA AND DISMISSAL OF
11 THE CHARGES. THE PETITION MAY RAISE ANY OTHER GROUNDS ON WHICH
12 THE DEFENDANT SEEKS TO WITHDRAW THE PLEA, AND THE COURT HAS
13 JURISDICTION TO CONSIDER THOSE GROUNDS.

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

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