

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 22-0628.01 Jacob Baus x2173

SENATE BILL 22-103

SENATE SPONSORSHIP

Gonzales, Buckner, Coleman, Coram, Donovan, Fenberg, Fields, Gardner, Hansen, Hisey, Holbert, Kolker, Lee, Moreno, Pettersen, Priola, Rankin, Rodriguez, Simpson, Story

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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 were not effectively advised of immigration consequences to a guilty plea, and therefore, these defendants did not knowingly, intelligently, and voluntarily enter a guilty plea.

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.

SENATE
3rd Reading Unamended
March 9, 2022

SENATE
Amended 2nd Reading
March 8, 2022

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 18-1-410.6 as
3 follows:

4 **18-1-410.6. Relief from improperly entered guilty pleas for**
5 **certain misdemeanor and municipal offenses - legislative declaration.**

6 (1) THE GENERAL ASSEMBLY FINDS THAT:

7 (a) SINCE THE COLORADO SUPREME COURT DECISION IN *PEOPLE V.*
8 *POZO*, 746 P.2d 523 (COLO. 1987), NONCITIZEN DEFENDANTS IN
9 COLORADO HAVE A CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF
10 COUNSEL THAT REQUIRES DEFENSE COUNSEL WHO KNOWS THE CLIENT IS
11 A NONCITIZEN TO INFORM ITSELF OF RELEVANT IMMIGRATION LAW. THE
12 UNITED STATES SUPREME COURT IN *PADILLA V. KENTUCKY*, 559 U.S. 356
13 (2010) FURTHER HELD THAT DEFENSE COUNSEL MUST INFORM A CLIENT OF
14 THE IMMIGRATION CONSEQUENCES OF A PLEA.

15 (b) MANY NONCITIZEN DEFENDANTS RECEIVED INEFFECTIVE
16 ASSISTANCE OF COUNSEL REGARDING IMMIGRATION CONSEQUENCES OF A
17 GUILTY PLEA.

18 (c) MANY PRO SE NONCITIZEN DEFENDANTS RECEIVED
19 INADEQUATE ADVISEMENTS THAT DID NOT EXPLAIN THAT THE RIGHT TO
20 COUNSEL INCLUDES THE RIGHT TO BE ADVISED OF IMMIGRATION
21 CONSEQUENCES OF A GUILTY PLEA. CONSEQUENTLY, MANY PRO SE
22 NONCITIZEN DEFENDANTS DID NOT KNOWINGLY, INTELLIGENTLY, AND
23 VOLUNTARILY WAIVE THEIR RIGHT TO COUNSEL WHEN ENTERING A GUILTY
24 PLEA.

25 (d) MANY NONCITIZEN DEFENDANTS HAVE BEEN UNFAIRLY
26 DEPRIVED OF THE OPPORTUNITY TO CHALLENGE AN UNCONSTITUTIONAL
27 GUILTY PLEA DUE TO A TIME LIMITATION CONTAINED IN SECTION 16-5-402,

1 A MUNICIPAL ORDINANCE, OR A MUNICIPAL COURT RULE OF PROCEDURE,
2 DESPITE VALID CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL OR AN
3 INVALID WAIVER OF THE RIGHT TO COUNSEL.

4 (e) PROTECTING THE CONSTITUTIONAL RIGHTS OF ALL
5 COLORADANS AND ENSURING THAT ALL DEFENDANTS ARE TREATED
6 CONSISTENTLY IN THEIR OPPORTUNITY TO AFFIRM THEIR CONSTITUTIONAL
7 RIGHTS IS A MATTER OF STATEWIDE CONCERN.

8 (2) THEREFORE, THE GENERAL ASSEMBLY DECLARES THAT
9 NONCITIZEN DEFENDANTS MUST HAVE THE OPPORTUNITY TO
10 MEANINGFULLY CHALLENGE AN UNCONSTITUTIONALLY ENTERED GUILTY
11 PLEA FOR CERTAIN CLASS 1 MISDEMEANORS, CLASS 2 MISDEMEANORS, AND
12 MUNICIPAL OFFENSES.

13 (3) (a) NOTWITHSTANDING A LIMITATION CONTAINED IN SECTION
14 16-5-402, A MUNICIPAL ORDINANCE, OR A MUNICIPAL COURT RULE OF
15 PROCEDURE, AT ANY TIME FOLLOWING THE ENTRY OF A GUILTY PLEA, A
16 CRIMINAL DEFENDANT MAY CHALLENGE THE GUILTY PLEA ON THE
17 GROUNDS SET FORTH IN SUBSECTION (4) OF THIS SECTION TO A:

18 (I) CLASS 1 OR CLASS 2 MISDEMEANOR THAT IS NOT DEFINED IN
19 SECTION 24-4.1-302 (1) OR TITLE 42, AND COMMITTED BEFORE MARCH 1,
20 2022; OR

21 (II) MUNICIPAL OFFENSE THAT IS NOT SUBSTANTIALLY SIMILAR TO
22 AN OFFENSE DEFINED IN SECTION 24-4.1-302 (1) OR TITLE 42, AND
23 COMMITTED BEFORE MARCH 1, 2022.

24 (b) THE COURT IN WHICH THE GUILTY PLEA WAS ORIGINALLY
25 ENTERED HAS JURISDICTION AND AUTHORITY TO DECIDE THE MOTION.

26 (4) A DEFENDANT MOVING TO VACATE A GUILTY PLEA TO A CLASS
27 1 OR CLASS 2 MISDEMEANOR, OR A MUNICIPAL OFFENSE, MUST, IN GOOD

1 FAITH, ALLEGE THE FOLLOWING:

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

5 (b) THE GUILTY PLEA WAS OBTAINED IN VIOLATION OF THE
6 CONSTITUTION OR LAWS OF THE UNITED STATES OR OF THIS STATE ON ONE
7 OR MORE OF THE FOLLOWING GROUNDS:

8 (I) THE DEFENDANT WAS NOT ADEQUATELY ADVISED OF THE
9 ADVERSE IMMIGRATION CONSEQUENCES OF THE GUILTY PLEA BY DEFENSE
10 COUNSEL;

11 (II) THE DEFENDANT DID NOT KNOWINGLY, INTELLIGENTLY, AND
12 VOLUNTARILY WAIVE THE RIGHT TO COUNSEL BECAUSE THE DEFENDANT
13 WAS NOT ADVISED THAT THE RIGHT TO COUNSEL INCLUDES THE RIGHT TO
14 BE ADVISED REGARDING THE IMMIGRATION CONSEQUENCES OF A GUILTY
15 PLEA; OR

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

18 (5) (a) UPON RECEIPT OF THE DEFENDANT'S MOTION, THE
19 PROSECUTION SHALL RESPOND WITHIN SIXTY-THREE DAYS OR REQUEST
20 ADDITIONAL TIME FOR GOOD CAUSE SHOWN. IF A RESPONSE IS NOT FILED,
21 THE DEFENDANT'S MOTION IS DEEMED UNOPPOSED, AND THE COURT SHALL
22 GRANT THE DEFENDANT'S MOTION. IF THE PROSECUTION OPPOSES THE
23 DEFENDANT'S MOTION, IT SHALL ALLEGE, IN GOOD FAITH, THE FACTS UPON
24 WHICH IT BASES ITS OPPOSITION. IF THE RESPONSE RAISES AN ISSUE OF
25 MATERIAL FACT, THE COURT SHALL SET THE MATTER FOR AN EVIDENTIARY
26 HEARING WITHIN TWENTY-ONE DAYS.

27 (b) UNLESS THE PROSECUTION PROVES BY A PREPONDERANCE OF

1 THE EVIDENCE THAT THE DEFENDANT WILL NOT SUFFER AN ADVERSE
2 IMMIGRATION CONSEQUENCE OR THAT THE GUILTY PLEA WAS
3 CONSTITUTIONALLY ENTERED, THE COURT SHALL GRANT THE DEFENDANT'S
4 MOTION.

5 (c) FOR CLAIMS RAISED PURSUANT TO SUBSECTION (4)(b)(II) OF
6 THIS SECTION, THE PROSECUTION SHALL NOT RELY SOLELY ON WRITTEN
7 DOCUMENTS, SUCH AS A DEFERRED JUDGMENT AGREEMENT, PLEA
8 PAPERWORK, OR TRANSCRIPT OF A COURT COLLOQUY, TO RAISE AN ISSUE
9 OF MATERIAL FACT TO OBTAIN AN EVIDENTIARY HEARING OR DEFEAT A
10 CLAIM AT THE HEARING UNLESS THE DOCUMENTS CLEARLY SHOW THAT
11 THE DEFENDANT WAS INFORMED BY THE COURT THAT THE RIGHT TO
12 COUNSEL INCLUDED THE RIGHT TO BE ADVISED REGARDING THE
13 IMMIGRATION CONSEQUENCES RESULTING FROM A GUILTY PLEA AND THAT
14 THE DEFENDANT THEN KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY
15 WAIVED THAT RIGHT.

16 (6) IF THE DEFENDANT SUCCEEDS IN CHALLENGING A GUILTY PLEA
17 PURSUANT TO THIS SECTION, THE COURT SHALL VACATE THE GUILTY PLEA
18 AS CONSTITUTIONALLY INFIRM AND SET THE CASE FOR AN ARRAIGNMENT.

19 **SECTION 2.** In Colorado Revised Statutes, amend 13-10-103 as
20 follows:

21 **13-10-103. Applicability.** This article 10 applies to and governs
22 the operation of municipal courts in the cities and towns of this state.
23 Except for the provisions relating to the method of salary payment for
24 municipal judges, the incarceration of children pursuant to sections
25 19-2.5-305 and 19-2.5-1511, the appearance of the parent, guardian, or
26 lawful custodian of any child under eighteen years of age who is charged
27 with a municipal offense as required by section 13-10-111, the right to a

1 trial by jury for petty offenses pursuant to section 16-10-109, RELIEF
2 FROM IMPROPERLY ENTERED GUILTY PLEAS PURSUANT TO SECTION
3 18-1-410.6, rules of procedure promulgated by the supreme court, and
4 appellate procedure, this article 10 may be superseded by charter or
5 ordinance enacted by a home rule city.

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