

**Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 22-0628.01 Jacob Baus x2173

SENATE BILL 22-103

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 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.

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 THE TIME LIMITATIONS CONTAINED IN SECTION

1 16-5-402, DESPITE VALID CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL
2 OR AN INVALID WAIVER OF THE RIGHT TO COUNSEL.

3 (2) THEREFORE, THE GENERAL ASSEMBLY DECLARES THAT
4 NONCITIZEN DEFENDANTS MUST HAVE THE OPPORTUNITY TO
5 MEANINGFULLY CHALLENGE AN UNCONSTITUTIONALLY ENTERED GUILTY
6 PLEA FOR CERTAIN CLASS 1 MISDEMEANORS, CLASS 2 MISDEMEANORS, AND
7 MUNICIPAL OFFENSES.

8 (3) (a) NOTWITHSTANDING THE TIME LIMITATION CONTAINED IN
9 SECTION 16-5-402, AT ANY TIME FOLLOWING THE ENTRY OF A GUILTY
10 PLEA, A CRIMINAL DEFENDANT MAY CHALLENGE THE GUILTY PLEA ON THE
11 GROUNDS SET FORTH IN SUBSECTION (4) OF THIS SECTION TO A:

12 (I) CLASS 1 OR CLASS 2 MISDEMEANOR THAT IS NOT DEFINED IN
13 SECTION 24-4.1-302 (1) OR TITLE 42, AND COMMITTED BEFORE MARCH 1,
14 2022; OR

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

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

20 (4) A DEFENDANT MOVING TO VACATE A GUILTY PLEA TO A CLASS
21 1 OR CLASS 2 MISDEMEANOR, OR A MUNICIPAL OFFENSE, MUST, IN GOOD
22 FAITH, ALLEGE THE FOLLOWING:

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

26 (b) THE GUILTY PLEA WAS OBTAINED IN VIOLATION OF THE
27 CONSTITUTION OR LAWS OF THE UNITED STATES OR OF THIS STATE ON ONE

1 OR MORE OF THE FOLLOWING GROUNDS:

2 (I) THE DEFENDANT WAS NOT ADEQUATELY ADVISED OF THE
3 IMMIGRATION CONSEQUENCES OF THE GUILTY PLEA BY DEFENSE COUNSEL;

4 (II) THE DEFENDANT DID NOT KNOWINGLY, INTELLIGENTLY, AND
5 VOLUNTARILY WAIVE THE RIGHT TO COUNSEL BECAUSE THE DEFENDANT
6 WAS NOT ADVISED THAT THE RIGHT TO COUNSEL INCLUDES THE RIGHT TO
7 BE ADVISED REGARDING THE IMMIGRATION CONSEQUENCES OF A GUILTY
8 PLEA; OR

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

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

20 (b) UNLESS THE PROSECUTION PROVES BY A PREPONDERANCE OF
21 THE EVIDENCE THAT THE DEFENDANT WILL NOT SUFFER AN IMMIGRATION
22 CONSEQUENCE OR THAT THE GUILTY PLEA WAS CONSTITUTIONALLY
23 ENTERED, THE COURT SHALL GRANT THE DEFENDANT'S MOTION.

24 (c) FOR CLAIMS RAISED PURSUANT TO SUBSECTION (4)(b)(II) OF
25 THIS SECTION, THE PROSECUTION SHALL NOT RELY SOLELY ON WRITTEN
26 DOCUMENTS, SUCH AS A DEFERRED JUDGMENT AGREEMENT, PLEA
27 PAPERWORK, OR TRANSCRIPT OF A COURT COLLOQUY, TO RAISE AN ISSUE

1 OF MATERIAL FACT TO OBTAIN AN EVIDENTIARY HEARING OR DEFEAT A
2 CLAIM AT THE HEARING UNLESS THE DOCUMENTS CLEARLY SHOW THAT
3 THE DEFENDANT WAS INFORMED BY THE COURT THAT THE RIGHT TO
4 COUNSEL INCLUDED THE RIGHT TO BE ADVISED REGARDING THE
5 IMMIGRATION CONSEQUENCES RESULTING FROM A GUILTY PLEA AND THAT
6 THE DEFENDANT THEN KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY
7 WAIVED THAT RIGHT.

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

11 **SECTION 2. Safety clause.** The general assembly hereby finds,
12 determines, and declares that this act is necessary for the immediate
13 preservation of the public peace, health, or safety.