

CHAPTER 105

COURTS

SENATE BILL 22-103

BY SENATOR(S) Gonzales, Buckner, Coleman, Coram, Donovan, Fields, Gardner, Hansen, Hisey, Holbert, Kolker, Lee, Moreno, Pettersen, Priola, Rankin, Rodriguez, Simpson, Story, Fenberg;
also REPRESENTATIVE(S) Tipper, Bacon, Benavidez, Exum, Gonzales-Gutierrez, Herod, Hooton, Jodeh, Kennedy, Lindsay, McCluskie, Michaelson Jenet, Ricks, Snyder, Weissman, Woodrow.

AN ACT**CONCERNING A REMEDY FOR IMPROPERLY ENTERED GUILTY PLEAS.**

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

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

18-1-410.6. Relief from improperly entered guilty pleas for certain misdemeanor and municipal offenses - legislative declaration. (1) THE GENERAL ASSEMBLY FINDS THAT:

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

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

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

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(d) MANY NONCITIZEN DEFENDANTS HAVE BEEN UNFAIRLY DEPRIVED OF THE OPPORTUNITY TO CHALLENGE AN UNCONSTITUTIONAL GUILTY PLEA DUE TO A TIME LIMITATION CONTAINED IN SECTION 16-5-402, A MUNICIPAL ORDINANCE, OR A MUNICIPAL COURT RULE OF PROCEDURE, DESPITE VALID CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL OR AN INVALID WAIVER OF THE RIGHT TO COUNSEL.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13-10-103. Applicability. This article 10 applies to and governs the operation of municipal courts in the cities and towns of this state. Except for the provisions relating to the method of salary payment for municipal judges, the incarceration of children pursuant to sections 19-2.5-305 and 19-2.5-1511, the appearance of the parent, guardian, or lawful custodian of any child under eighteen years of age who is charged with a municipal offense as required by section 13-10-111, the right to a trial by jury for petty offenses pursuant to section 16-10-109, RELIEF FROM IMPROPERLY ENTERED GUILTY PLEAS PURSUANT TO SECTION 18-1-410.6, rules of procedure promulgated by the supreme court, and appellate procedure, this article 10 may be superseded by charter or ordinance enacted by a home rule city.

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

Approved: April 18, 2022