



## Legislation Text

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**File #:** Res 0240-2004, **Version:** A

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### Res. No. 240-A

Resolution urging the New York State legislature to take swift action to pass legislation that would require courts in New York State to advise defendants facing felony, misdemeanor or violation charges that a plea of guilty may result in deportation, exclusion from admission or denial of naturalization and that would provide real remedies for defendants if advisement does not occur.

By Council Members Martinez, Clarke, Stewart, Barron, Comrie, Dilan, Fidler, Foster, Jackson, Monserrate, Reed, Reyna, Rivera, Sanders, Seabrook, Liu, Gerson, Lopez, Palma, Yassky, Brewer, Nelson and Weprin

Whereas, In many instances involving individuals who are not citizens of the United States and who are charged with crimes under state law, defendants enter guilty pleas without knowing that their convictions may be grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States; and

Whereas, New York State law currently requires judges to advise defendants of the potential immigration consequences of guilty pleas only in felony cases and does not provide any remedy for defendants who do not receive this advice; and

Whereas, New York's law requiring judges to advise defendants in felony cases is set to expire on September 30, 2005, which increases the need for swift passage of legislation that informs defendants of the ramifications entering a guilty plea could have on their ability to remain in the United States; and

Whereas, In the interest of fairness, New York State law should require that, prior to accepting guilty pleas in felony, misdemeanor and violation cases, state courts must provide an appropriate warning of the potential immigration consequences for defendants who are not United States citizens; and

Whereas, Legislation that would require defendants to be advised of the immigration consequences of guilty pleas would give defendants time to negotiate with prosecutors in the event the defendant or defendant's counsel was unaware of the possibility of deportation, exclusion from admission to the United States, or denial of naturalization as a result of conviction; and

Whereas, Advisement legislation should not require defendants to disclose their legal status to the court at the time of a plea; and

Whereas, Prior to the acceptance of a guilty plea, a defendant should be entitled to substantially the following oral advisement to be administered on the record: "If you are not a citizen of the United States, you are hereby advised that acceptance by the court of a plea of guilty or conviction of the crime for which you have been charged may result in your deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States;" and

Whereas, To further ensure that defendants know their rights, legislation that would require judges to advise defendants of potential immigration consequences in felony, misdemeanor and violation cases also should provide real remedies for defendants if advisement does not occur; and

Whereas, It is just and fair that defendants who are not citizens of the United States are made aware of the significant consequences of pleading guilty prior to their doing so; now, therefore, be it

Resolved, That the Council of the City of New York urges the New York State legislature to take swift action to pass legislation that would require courts in New York State to advise defendants facing felony, misdemeanor or violation charges that a plea of guilty may result in deportation, exclusion from admission or denial of naturalization and that would provide real remedies for defendants if advisement does not occur.