



Legislation Text

File #: Res 1984-2009, **Version:** *

Res. No. 1984

Resolution urging the New York State Legislature to pass legislation that would require New York State courts, prior to accepting a plea to a felony, misdemeanor or violation, to advise defendants of immigration consequences and that would also provide substantive remedies for defendants who plead guilty without knowledge of such consequences.

By Council Members Stewart, Ferreras, Gerson, Seabrook, James, Liu, Sanders Jr., Weprin, White Jr., Barron, Reyna, Mark-Vivertito and Dilan.

Whereas, Non-citizen defendants facing violation, misdemeanor or felony charges in New York State's criminal courts are often encouraged to enter into plea agreements in order to expedite a case and to obtain immediate relief; and

Whereas, New York's Criminal Procedure Law contains a court advisement provision that requires courts in criminal cases to inform defendants of the possibility of deportation, exclusion or denial of naturalization, prior to accepting a defendant's guilty plea to a felony; and

Whereas, The court advisement provision does not require judges in criminal cases to counsel defendants until the plea allocution; and

Whereas, A judge will not be penalized for failing to make this disclosure nor will a judge's failure to disclose affect the voluntariness of the guilty plea; and

Whereas, The court advisement provision does not give a defendant a basis for later withdrawal or vacatur of the plea if a judge failed to make the necessary disclosures; and

Whereas, New York's court advisal provision only covers felonies; it does not cover misdemeanors or violations; and

Whereas, As a result of the 1996 changes to federal immigration law, non-citizens who enter a guilty

plea are at greater risk for deportation or removal from the U.S., even for entering into a plea agreement that entails pleading guilty to a violation or misdemeanor; and

Whereas, There are many potential consequences that may result from an immigrant entering a guilty plea, including mandatory detention, deportation and ineligibility for citizenship; and

Whereas, the lack of familiarity that most immigrants have with the concept of plea-bargaining, coupled with cultural and language barriers between such criminal defendants and their defense attorneys can lead many immigrants to be uncertain about what it means to plead guilty; and

Whereas, When an immigrant is deported, family members that remain in the U.S., especially children, suffer; and

Whereas, Approximately 1.6 million family members in the U.S. are separated from their husbands, wives and children as a result of removal since immigration reform legislation was passed in 1996; and

Whereas, Although New York is one of the five highest immigrant populated states it has the weakest statute of all 50 states regarding judicial notice to defendants of the immigration consequences of entering a guilty plea; and

Whereas, There are at least nine other states that have statutes or court rules that require notification prior to accepting a defendant's plea and most of these states allow the plea to be vacated if the prescribed warning is not given; and

Whereas, New York can grant greater protection to immigrants by providing notice of the federal rules and information on the risks that exist should a defendant enter into a plea agreement for any crime, including a misdemeanor or violation; and

Whereas, It is in the interest of justice to put into effect a warning mechanism that places the non-citizen defendant on notice so that he or she may make an informed choice as to whether or not to plead guilty; and

Whereas, Providing advisals will promote fairness and integrity in the criminal justice system by extending to non-citizen defendants charged with lesser offenses the fair warning given to felony defendants

under New York's Criminal Procedure Law and permitting them to withdraw or vacate a plea if the required advisement is not given; now, therefore, be it

Resolved, That the Council of the City of New York urges the New York State Legislature to pass legislation that would require New York State courts, prior to accepting a plea to a felony, misdemeanor or violation, to advise defendants of immigration consequences and that would also provide substantive remedies for defendants who plead guilty without knowledge of such consequences.

JEB
LS #7105
5/13/09