

SUBJECT: Informing a non-citizen of the immigration consequences of a guilty plea

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Herrero, Burnam, Canales, Hughes, Leach, Moody, Toth

1 nay — Schaefer

1 absent — Carter

SENATE VOTE: On final passage, March 27 — 30-0

WITNESSES: *(On House companion bill, HB 823:)*

For — John Vasquez, State Bar of Texas; Alberto Garcia; *(Registered, but did not testify:* Yannis Banks, Texas NAACP; Luis Figueroa, Mexican American Legal Defense and Educational Fund (MALDEF); Travis Leete, Texas Criminal Justice Coalition; Andrea Marsh, Texas Fair Defense Project; Allen Place, Texas Criminal Defense Lawyers Association; Chris Howe)

Against — None

BACKGROUND: Code of Criminal Procedure, art. 15.17(a) provides a list of items of which a magistrate must inform an arrested person, including the accusation against the person and the person's right to legal counsel.

Art. 26 requires an arraignment in all felony cases after indictment and all misdemeanor cases punishable by imprisonment.

Art. 26.13(a)(4) requires that before accepting a plea of guilty or a plea of no contest in an arraignment for felony or misdemeanor charges that would result in jail time, the court must inform the defendant that if the defendant is not a citizen of the United States, a plea of guilty or no contest may result in deportation, the exclusion from admission to this country, or the denial of naturalization under federal law.

DIGEST: SB 361 would amend Code of Criminal Procedure, Art. 15.17 by adding a requirement for a magistrate to inform an arrestee that, if the person was

not a citizen of the United States, a plea of guilty or nolo contendere could affect the person's immigration or residency status and could result in deportation, exclusion from admission to this country, or denial of naturalization.

The bill would take effect September 1, 2013.

**SUPPORTERS
SAY:**

In criminal cases involving non-citizen defendants, deportation is a possible consequence for a defendant who pleads guilty or no contest to secure a reduced penalty for the charges, including circumstances involving relatively minor charges such as shoplifting.

Current law does not require uniform instruction to accused persons in misdemeanor cases. While some courts in Texas are creating their own instructions, others are not giving instructions of any kind to those accused of misdemeanor offenses. However, some accused of misdemeanor offenses in Texas may be subject to immigration law consequences at the entering of a plea before a magistrate.

SB 361 would provide all magistrates in Texas with uniform instructions for informing those accused of criminal offenses about possible immigration law consequences of conviction. While there is not a constitutional requirement for a magistrate to instruct an arrested person of these consequences, judges are ethically bound to ensure that defendants are aware of the immigration consequences of criminal pleas and convictions. Uniform instructions would assist magistrates throughout the state, further the administration of justice within the court system, and maintain the integrity and fairness of the judicial process.

In *Padilla v. Kentucky (2010)*, the U.S. Supreme Court emphasized the obligation of counsel to notify non-citizen defendants of possible immigration consequences. Relying on defense lawyers to provide the instruction would not guarantee that instruction was given consistently. An arrested person may not have an opportunity to meet with counsel before going before a magistrate and could enter a guilty plea without receiving the appropriate counsel. Judges have a responsibility to make some effort to address the immigration consequences of a plea or conviction.

The bill would require a best practice that would not be a cost to the state or place an undue burden on the magistrates. It simply would be a sentence added to the instructions given by a magistrate.

OPPONENTS
SAY:

The state does not have a constitutional requirement for a magistrate to inform an arrested person of collateral consequences, such as the impact of a guilty plea on immigration status. SB 361 inappropriately would elevate this immigration admonishment when there are other serious collateral consequence in law that would deserve equal protection, such as a dishonorable discharge from the military.

OTHER
OPPONENTS
SAY:

If this bill went into effect, a failure to make a proper warning could result in overturned convictions. Notifying defendants of possible immigration consequences should remain the obligation of legal counsel.

NOTES:

The House companion bill, HB 823 by Anchia, was left pending in the House Committee on Criminal Jurisprudence on March 12.