

SUBJECT: Telling arrestees of immigration consequences of guilty, no contest pleas

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Herrero, Moody, Canales, Hunter, Leach, Shaheen, Simpson
0 nays

WITNESSES: For — George Dix; Dahlia M. Gutierrez; John Vasquez; (*Registered, but did not testify*: Charles Reed, Dallas County; Gloria Leal, Mexican American Bar Association of Texas; David Gonzalez, Texas Criminal Defense Lawyers Association; Sarah Pahl, Texas Criminal Justice Coalition; Emily Gerrick, Texas Fair Defense Project; Yannis Banks, Texas NAACP; Jennifer Allmon, Texas Catholic Conference of Bishops)

Against — None

On — Wesley Shackelford, Texas Indigent Defense Commission; David Slayton, Texas Office of Court Administration, Texas Judicial Council; (*Registered, but did not testify*: Deanna L. Kuykendall, Texas Municipal Courts Association)

BACKGROUND: Code of Criminal Procedure, art. 15.17(a) provides a list of items about which a magistrate must inform an arrested person within 48 hours of an arrest, including the accusation against the person, the person's right to legal counsel, and the right to remain silent.

Code of Criminal Procedure, art. 26.13(a)(4) requires that before accepting a plea of guilty or no contest in a felony case, the court must inform defendants that if they are not citizens of the United States, a plea of guilty or no contest may result in deportation, exclusion from admission to the United States, or the denial of naturalization under federal law.

DIGEST: HB 559 would expand the items about which a magistrate must tell arrestees within 48 hours of an arrest to include informing the arrestee that

if he or she was not a citizen of the United States, entering 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 the United States, or denial of naturalization under federal law.

The bill would take effect September 1, 2015.

**SUPPORTERS
SAY:**

HB 559 is needed to maintain the fairness and integrity of the state's justice system by ensuring that all of those arrested are aware of the possible immigration consequences of guilty or no contest pleas. The issue came to light with the U.S. Supreme Court decision in *Padilla v. Kentucky* in 2010, which emphasized the importance of criminal defendants understanding the seriousness of the potential immigration consequences of convictions and pleas in their cases.

In criminal cases involving non-citizen defendants, deportation or other consequences can occur after guilty or no contest pleas, including for relatively minor charges. While current law requires that defendants being arraigned for felony offenses be informed of possible immigration consequences of guilty or no contest pleas, there is no such requirement for those arrested for misdemeanor offenses, many of which proceed without the defendant having a lawyer. Some courts in Texas have created their own instructions and are providing this information to those accused of misdemeanors, but others are not. Because the immigration consequences can be the same whether the offense was a felony or misdemeanor, the state should ensure all defendants receive the information soon after being arrested.

The bill would address this problem and comply with the spirit of the *Padilla v. Kentucky* decision by requiring magistrates to give clear and uniform instructions to every defendant about possible immigration law consequences of their pleas. While there is not a constitutional requirement for a magistrate to instruct an arrestee of these consequences, it is important that all defendants are consistently informed of and understand this information and their rights. Under American Bar Association guidelines, judges are ethically bound to advise defendants

that they may face immigration consequences if they plead guilty or no contest.

In *Padilla v. Kentucky*, the U.S. Supreme Court emphasized the obligation of counsel to notify non-citizen defendants of possible immigration consequences. However, relying on defense lawyers to provide the instruction would not work in the many misdemeanor cases in which defendants go before a magistrate and enter a plea without first meeting with a lawyer. In other cases in which an arrestee may have a lawyer, instructions could be given out inconsistently. In these cases, the bill would remind defense counsel of their obligations to inform defendants of possible immigration consequences. Giving this instruction at the beginning of the arrest process to all defendants would avoid inconsistencies in its application.

The bill would require a best practice, already used in about half the states, that would not impose a cost on the state or courts or be a burden on magistrates. To implement the bill, a sentence simply would have to be added to the current instructions.

Instead of possibly leading to convictions being challenged or overturned, the bill would work to prevent such occurrences. A blanket requirement for all defendants to receive the warning from a magistrate would add a layer of protection from cases being overturned on appeals based on someone not receiving the information.

OPPONENTS
SAY:

The state does not have a constitutional requirement for a magistrate to inform arrestees of the consequences of a guilty or no contest plea on immigration status. Because it is not a constitutional requirement, the information should not be included among other admonishments in Code of Criminal Procedure, art. 15.17, which include the right to counsel and the right to be silent. HB 559 would elevate the immigration-related admonishment when there are other consequences in law that might deserve equal treatment.

Under HB 559, a failure to make a proper warning might be used to

challenge a conviction and could result in overturned convictions. Notifying defendants of possible immigration consequences should remain the obligation of legal counsel, not magistrates. Before courts accept guilty or no contest pleas for felonies, judges must give individuals information about the possible immigration consequences of such a plea, and this is the proper time to give out the information.

NOTES: The Senate companion bill, SB 268 by Watson, was approved by the Senate on April 20.