
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 267 **Hearing Date:** June 16, 2015
Author: Jones-Sawyer
Version: April 16, 2015
Urgency: No **Fiscal:** No
Consultant: LT

Subject: *Criminal Procedure: Disclosure: Felony Conviction Consequences*

HISTORY

Source: California Attorneys for Criminal Justice

Prior Legislation: AB 142 (Fuentes) – 2011, vetoed
AB 15 (Fuentes) – 2009, vetoed
AB 806 (Fuentes) – 2010, vetoed

Support: American Civil Liberties Union; California Rifle and Pistol Association; Center on Juvenile and Criminal Justice; Law Center to Prevent Gun Violence; Legal Services for Prisoners with Children

Opposition: California Judges Association; Judicial Council of California

Assembly Floor Vote: 57 - 21

PURPOSE

The purpose of this bill is to require the court, prior to acceptance of a guilty plea to a felony offense, to inform the defendant of the various consequences that may result from a felony conviction.

Existing law requires, prior to acceptance of a plea of guilty or nolo contendere to any offense punishable as a crime under state law, the court shall administer the following advisement on the record to the defendant: “[i]f you are not a citizen, you are hereby advised that the conviction of the offense for which you have been charged may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States. (Penal Code § 1016.5 (a).)

Existing law states that upon request, the court shall allow the defendant additional time to consider the appropriateness of the plea in light of the advisement as described in this section. (Penal Code § 1016.5 (b).)

Existing law provides if the court fails to advise the defendant as required by this section and the defendant shows that conviction of the offense to which defendant pleaded guilty or nolo contendere may have the consequences for the defendant of deportation, exclusion from admission to the United States or denial of naturalization pursuant to the laws of the United States, the court, on defendant’s motion, shall vacate the judgment and permit the defendant to

withdraw the plea of guilty or nolo contendere, and enter a plea of not guilty. (Penal Code § 1016.5 (b).)

Existing law states that absent a record that the court provided the advisement required by this section, the defendant shall be presumed not to have received the required advisement. (Penal Code § 1016.5 (b).)

Existing law provides that with respect to pleas entered prior to January 1, 1978, it is not the intent of the Legislature that a court's failure to provide the required advisement should require the vacation of judgment and withdrawal of the plea or constitute grounds for finding a prior conviction invalid. (Penal Code § 1016.5 (c).)

Existing law finds and declares that in many instances involving an individual who is not a citizen of the United States charged with an offense punishable as a crime under state law, a plea of guilty or nolo contendere is entered without the defendant knowing that a conviction of such offense is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States. Therefore, it is the intent of the Legislature in enacting this section to promote fairness to such accused individuals by requiring in such cases that acceptance of a guilty plea or plea of nolo contendere be preceded by an appropriate warning of the special consequences for such a defendant which may result from a plea. It is also the intent of the Legislature that the court in such cases shall grant the defendant a reasonable amount of time to negotiate with the prosecuting agency in the event the defendant or the 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. It is further the intent of the Legislature that at the time of the plea no defendant shall be required to disclose his or her legal status to the court. (Penal Code § 1016.5 (d).)

This bill requires the court to "inform the defendant that a conviction for a felony offense may result in various consequences to the defendant, including, but not limited to, the following:

- Experiencing difficulty in obtaining employment generally, and prohibited from employment in certain jobs;
- The loss of voting rights while incarcerated and during parole;
- Ineligibility for enlisting in the military;
- The loss of certain professional licenses, or the loss of the ability to obtain certain professional licenses;
- Ineligibility for serving on a jury;
- Ineligibility to own or possess a firearm;
- Ineligibility for federal health care programs if the felony is related to fraud involving a federal program, patient abuse, or drugs;
- Loss of federal financial aid if the felony was committed while the defendant was receiving financial aid;
- Ineligibility for federal cash assistance if the felony is drug-related;
- Restrictions on receiving Supplemental Security Income; and,
- Potential diminished parental and child custody rights."

This bill will not be retroactive, or constitute grounds for finding a prior conviction invalid prior to January 1, 2016.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight years, this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In February of this year the administration reported that as "of February 11, 2015, 112,993 inmates were housed in the State's 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity." (Defendants' February 2015 Status Report In Response To February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).

While significant gains have been made in reducing the prison population, the state now must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for This Legislation

According to the *Center on Juvenile and Criminal Justice*:

Many CJCJ clients have accepted plea deals without being informed of the serious consequences of felony convictions—consequences they will live with for the rest of their lives. These records make it difficult for our clients and other justice-involved to integrate successfully into the community; they struggle to find jobs and housing simply due to their felony convictions, regardless of their efforts and motivation to lead productive and law-abiding lives. Moreover, these convictions make people ineligible for many professional licenses, for citizenship, or for serving in the military or on a jury.

California has one of the highest recidivism rates in the nation. Removing or limiting the barriers to successful reentry is the key to both lowering recidivism rates and helping formerly incarcerated people like our clients reintegrate into society. By informing defendants of the consequences of accepting a plea and a felony conviction, defendants will make more informed decisions about their future.

2. Effect of This Legislation

Under current law, prior to any offense, the court shall inform defendants that if not a citizen, the defendant may face consequences including deportation, exclusion from admission to the United States, or denial of naturalization. This bill will require the court to inform defendants of additional consequences associated with a felony conviction before the defendant accepts a plea of guilty to a felony including, but not limited to, the points articulated in this bill. This bill would be prospective following January 1, 2016.

3. Argument in Opposition

The California Judges Association states in part:

AB 267 requires the court to advise the defendant when he or she first appears for felony arraignment that accepting a plea or suffering a conviction for a felony may result in specified consequences. Before a court may accept a plea of guilty or no contest, the defendant must be advised of the direct consequences of such a plea.

The court need not advise the defendant of the collateral consequences, defined as those that do not inexorably flow from a conviction. For example, it is unnecessary to state that a guilty plea may be used in a future federal prosecution or as the basis for confinement under the sexually violent predator act...Further, even moving the proposed advisements to the time of plea rather than arraignment if that were contemplated, would result in additional court time and delays.

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