

JAN 25 2006

A BILL FOR AN ACT

RELATING TO COURT ADVISEMENT CONCERNING ALIEN STATUS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 802E-2, Hawaii Revised Statutes, is
2 amended to read as follows:

3 " ~~[§802E-2]~~ §802E-2 Court advisement concerning alien status
4 **required.** Prior to acceptance of a plea of guilty or nolo
5 contendere to any offense punishable as a crime under state law,
6 except offenses designated as infractions under state law, the
7 court shall administer the following advisement, or its
8 functional equivalent, on the record to the defendant:

9 If you are not a citizen of the United States, you are
10 hereby advised that conviction of the offense for which you
11 have been charged may have the consequences of deportation,
12 exclusion from admission to the United States, or denial of
13 naturalization pursuant to the laws of the United States.

14 Upon request, the court shall allow the defendant
15 additional time to consider the appropriateness of the plea in
16 light of the advisement as described in this section."

17 SECTION 3. Statutory material to repealed is bracketed and
18 stricken. New statutory material is underscored.

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1 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: 

BY REQUEST

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO COURT
ADVISEMENT CONCERNING ALIEN STATUS.

PURPOSE: To allow courts to advise defendants of the effect of a criminal conviction on alien status by using the exact language set forth in section 802E-2, Hawaii Revised Statutes, or by using an advisement that is the functional equivalent of the language contained in section 802E-2.

MEANS: Amend section 802E-2, Hawaii Revised Statutes.

JUSTIFICATION: Courts, for a variety of reasons, might find it necessary to depart from the exact language contained in section 802E-2 when advising a criminal defendant of the effect of a criminal conviction on alien status. As section 802E-2 currently reads, the slightest deviation from the exact language required by section 802E-2 becomes grounds to withdraw a plea of guilty or no contest, even years after the court accepts the plea. While it is fair that criminal defendants be adequately advised regarding the effect of a conviction on alien status, there is no reason why courts who use an alternative advisement that is correct, fair, and understandable should be found to have committed error simply because the exact language set forth in section 802E-2 was not followed word-for-word.

Impact on the public: None.

Impact on the department and other agencies:
The current requirement that judges recited the exact language set forth in section 802E-2 will be replaced by a more flexible and practical standard that the judges recited the exact language set forth in

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section 802E-2, or "its functional equivalent."

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: None.

OTHER AFFECTED AGENCIES: Judiciary.

EFFECTIVE DATE: Upon approval.