

H.B. NO. 1027

A BILL FOR AN ACT

RELATING TO COURT ADVISEMENT OF ALIENS.

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[+]~~ **Court advisement concerning alien status**
4 **required.** [~~Prior to acceptance~~] Upon entry of a plea of guilty
5 or nolo contendere to any offense punishable as a crime under
6 state law, except offenses designated as infractions under state
7 law, the court shall [~~administer the following advisement on the~~
8 ~~record to the defendant.~~

9 ~~If you are]~~ address the defendant personally in open court
10 and determine that the defendant understands that if the
11 defendant is not a citizen of the United States, [~~you are hereby~~
12 ~~advised that conviction of the offense for which you have been~~
13 ~~charged]~~ a conviction or a plea of guilty or no contest, whether
14 acceptance of the plea is deferred or not, may have the
15 consequences of deportation, exclusion from admission to the
16 United States, or denial of naturalization pursuant to the laws
17 of the United States. Upon request, the court shall allow the

1 defendant additional time to consider the appropriateness of the
2 plea in light of the advisement as described in this section."

3 SECTION 2. This Act shall apply only to pleas entered or
4 accepted after the effective date of this Act. Nothing in this
5 Act shall require the vacation of judgment and withdrawal of the
6 plea or constitute grounds for finding a prior conviction
7 invalid with respect to pleas entered or accepted prior to the
8 effective date of this Act.

9 SECTION 3. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

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

12
13 INTRODUCED BY: Calvin K. Day
14

BY REQUEST

JAN 26 2009

Report Title:

Court Advisement Of Aliens

Description:

Clarifies the requirement that courts advise pleading defendants of the possible consequences of the plea upon alien status.

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO COURT
ADVISEMENT OF ALIENS.

PURPOSE: To clarify the requirement that courts advise pleading defendants of the possible consequences of the plea upon alien status, such that the focus is on the defendant's understanding of the possible consequences of the plea and not upon how the court reads the advisement. The purpose of the statute has always been to ensure a defendant's understanding of the possible consequences of pleading guilty or nolo contendere, and not to ensure that a court has read the advisement verbatim to defendant.

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

JUSTIFICATION: Section 802E-2 has required courts to administer a specific advisement to defendants concerning their alien status. Some courts have interpreted this mandate to mean that courts must read the statutory advisement verbatim and that upon any deviation from that specific advisement, a court must vacate the judgment and allow the withdrawal of a defendant's plea. This bill makes the statutory language more consistent with Rule 11(c) of the Hawaii Rules of Penal Procedure, and makes it clear that the focus of the statute is not verbatim advisement, but careful determination that the defendant understands the consequences of the plea upon alien status.

Impact on the public: This bill will allow the public to have more confidence in final criminal judgments by eliminating a technical argument criminal defendants have made in attempts to reopen completed cases.

Impact on the department and other agencies:
This bill will make it clear that the courts are not being compelled to read the advisement concerning alien status to the defendant verbatim, but are being required to make sure that defendants understand the possible consequences of a guilty or no contest plea upon alien status.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: Judiciary, county police, county prosecutors, and the Office of the Public Defender.

EFFECTIVE DATE: Upon approval.