

CHAPTER 802E
COURT ADVISEMENT OF ALIENS ENTERING GUILTY PLEA

Section

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Case Notes

No abuse of discretion where court refused to apply provisions of chapter retroactively to defendant's prior conviction. 81 H. 279, 916 P.2d 689 (1996).

" **[\$802E-1] Legislative findings and intent.** The legislature finds 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 the 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 the defendant's legal status to the court. [L 1988, c 382, pt of §1]

" **§802E-2 Court advisement concerning alien status required prior to the commencement of trial, entry of a plea of guilty or nolo contendere, or admission of guilt or sufficient facts.** Prior to the commencement of trial, entry of a plea of guilty or nolo contendere, or admission of guilt or sufficient facts to any offense punishable as a crime under state law, except offenses designated as infractions under state law, the court shall administer the following advisement on the record to the defendant:

If you are not a citizen of the United States, whether or not you have lawful immigration status, you have the right to receive advice from your attorney about the specific impact that this case will have, if any, on your immigration status. The entry of a guilty or nolo contendere plea, admission of guilt or sufficient facts, or conviction, deferred judgment, or deferred sentence may have the consequences of your immediate detention,

deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States. In some cases, detention and deportation from the United States will be required. Your lawyer must investigate and advise you about these issues prior to the commencement of trial, entry of a guilty or nolo contendere [plea], or admission of guilt or sufficient facts to any offense punishable as a crime under state law, other than those offenses designated as infractions. You are not required to disclose your immigration or citizenship status to the court.

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. [L 1988, c 382, pt of §1; am L 2013; c 279, §2]

Case Notes

Where trial court failed to recite on the record the advisement concerning alien status to defendant as required by the plain language of this section, and the standard set forth in §802E-3 mandates that the trial court either advise the defendant as required by this section or "vacate the judgment and permit the defendant to withdraw the plea of nolo contendere and enter a plea of not guilty", judgment vacated and defendant permitted to withdraw nolo contendere plea and enter a plea of not guilty. 108 H. 162, 118 P.3d 645 (2005).

" **§802E-3 Failure to advise; vacation of judgment.** If the court fails to advise the defendant as required by sections 802E-2 and 802E-4 and the defendant shows that conviction of the offense to which the 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, on defendant's motion, the court shall vacate the judgment and permit the defendant to withdraw the plea of guilty or nolo contendere, and enter a plea of not guilty. 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. [L 1988, c 382, pt of §1; am L 2013, c 279, §3]

Case Notes

Where trial court failed to recite on the record the advisement concerning alien status to defendant as required by

the plain language of §802E-2, and the standard set forth in this section mandates that the trial court either advise the defendant as required by §802E-2 or "vacate the judgment and permit the defendant to withdraw the plea of nolo contendere and enter a plea of not guilty", judgment vacated and defendant permitted to withdraw nolo contendere plea and enter a plea of not guilty. 108 H. 162, 118 P.3d 645 (2005).

" **[§802E-4] Court advisement concerning alien status required at the commencement of arraignment and plea hearing.**

At the commencement of the court session for arraignment and plea hearings for an offense punishable as a crime under state law, except offenses designated as infractions under state law, the court shall administer the following advisement on the record to all defendants present:

If you are not a citizen of the United States, whether or not you have lawful immigration status, your case may have severe and irreversible consequences, including immediate detention, deportation, or exclusion from admission or denial of naturalization to the United States. Your attorney must advise you regarding the possible consequences this case may have on your immigration status. You are not required to disclose your immigration or citizenship status to the court.

[L 2013, c 279, §1]