

**ACT 279**

H.B. NO. 1059

A Bill for an Act Relating to Court Advisement Concerning Alien Status.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 802E, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§802E- 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.”

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

**“§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 ~~[acceptance]~~ 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, you are hereby advised that 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.]~~ 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, 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.”

SECTION 3. Section 802E-3, Hawaii Revised Statutes, is amended to read as follows:

**“§802E-3 Failure to advise; vacation of judgment.** If the court fails to advise the defendant as required by ~~[section]~~ sections 802E-2 and 802E- 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

## ACT 279

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.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect on July 1, 2013.

(Became law on July 9, 2013, without the governor’s signature, pursuant to Art. III, §16, State Constitution.)

### Note

1. Edited pursuant to HRS §23G-16.5.