

An Act

SENATE BILL 19-030

BY SENATOR(S) Gonzales, Court, Fenberg, Fields, Hill, Lee, Moreno, Williams A., Winter;
also REPRESENTATIVE(S) Tipper, Arndt, Benavidez, Coleman, Galindo, Herod, Hooton, Jackson, Jaquez Lewis, Kennedy, Kipp, Mullica, Snyder, Sullivan, Valdez A., Weissman.

CONCERNING A REMEDY FOR IMPROPERLY ENTERED GUILTY PLEAS, AND IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** 18-1-410.5 as follows:

18-1-410.5. Relief from improperly entered guilty pleas - legislative declaration. (1) THE GENERAL ASSEMBLY FINDS THAT:

(a) A CRIMINAL DEFENDANT CANNOT CHALLENGE AN UNCONSTITUTIONAL GUILTY PLEA WHEN THAT PLEA HAS BEEN WITHDRAWN AND THE UNDERLYING CHARGES DISMISSED FOLLOWING THE SUCCESSFUL COMPLETION OF A DEFERRED JUDGMENT OR THE DISMISSAL OF CHARGES PURSUANT TO SECTION 18-18-404 (3) PRIOR TO ITS REPEAL IN 2010;

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(b) BASED ON THE STATUTORY LANGUAGE OF SECTIONS 18-1.3-102 AND 18-18-404 (3), TOGETHER WITH THE WRITTEN DEFERRED JUDGMENT AGREEMENT AND COURT COLLOQUY THAT ACCOMPANIES SUCH AGREEMENTS, MANY NONCITIZEN DEFENDANTS DID NOT UNDERSTAND THAT THE GUILTY PLEA WOULD CONTINUE TO CONSTITUTE A CONVICTION FOR IMMIGRATION PURPOSES AND RESULT IN ADVERSE IMMIGRATION CONSEQUENCES, DESPITE THE SUBSEQUENT WITHDRAWAL OF THE GUILTY PLEA AND DISMISSAL OF THE CHARGES UPON SUCCESSFUL COMPLETION OF THE DEFERRED JUDGMENT OR DISMISSAL PURSUANT TO SECTION 18-18-404 (3); AND

(c) IN THE ABSENCE OF AN APPROPRIATE MECHANISM, MANY NONCITIZEN DEFENDANTS HAVE BEEN UNFAIRLY DEPRIVED OF THE OPPORTUNITY TO CHALLENGE GUILTY PLEAS THAT WERE ENTERED IN VIOLATION OF THE CONSTITUTION OR LAWS OF THE UNITED STATES OR OF THIS STATE THAT RESULTED IN ADVERSE IMMIGRATION CONSEQUENCES.

(2) NOTWITHSTANDING THE TIME LIMITATION CONTAINED IN SECTION 16-5-402, AT ANY TIME FOLLOWING THE WITHDRAWAL OF THE GUILTY PLEA AND DISMISSAL OF THE CHARGES UPON SUCCESSFUL COMPLETION OF A DEFERRED JUDGMENT, OR UPON THE DISMISSAL OF CHARGES PURSUANT TO SECTION 18-18-404 (3) PRIOR TO ITS REPEAL, A CRIMINAL DEFENDANT MAY CHALLENGE THE GUILTY PLEA ON THE GROUNDS SET FORTH IN SUBSECTION (3) OF THIS SECTION. THE COURT IN WHICH THE GUILTY PLEA WAS ORIGINALLY ENTERED HAS JURISDICTION AND AUTHORITY TO DECIDE THE MOTION.

(3) A DEFENDANT MOVING TO VACATE A GUILTY PLEA THAT HAS ALREADY BEEN WITHDRAWN FOLLOWING THE SUCCESSFUL COMPLETION OF A DEFERRED JUDGMENT OR UPON THE DISMISSAL OF CHARGES PURSUANT TO SECTION 18-18-404 (3) PRIOR TO ITS REPEAL MUST, IN GOOD FAITH, ALLEGE THE FOLLOWING:

(a) AS A RESULT OF THE GUILTY PLEA, THE DEFENDANT HAS SUFFERED, IS CURRENTLY SUFFERING, OR WILL SUFFER, AN ADVERSE IMMIGRATION CONSEQUENCE; AND

(b) THE GUILTY PLEA WAS OBTAINED IN VIOLATION OF THE CONSTITUTION OR LAWS OF THE UNITED STATES OR OF THIS STATE UNDER

ONE OR MORE OF THE FOLLOWING GROUNDS:

(I) THE DEFENDANT WAS NOT INFORMED THAT THE GUILTY PLEA WOULD CONTINUE TO RESULT IN ADVERSE IMMIGRATION CONSEQUENCES DESPITE THE SUBSEQUENT WITHDRAWAL OF THE GUILTY PLEA AND DISMISSAL OF THE CHARGES WITH PREJUDICE;

(II) THE DEFENDANT WAS NOT ADEQUATELY ADVISED OF THE IMMIGRATION CONSEQUENCES OF THE GUILTY PLEA; OR

(III) THE GUILTY PLEA WAS CONSTITUTIONALLY INFIRM FOR ANY OTHER REASON SET FORTH IN SECTION 18-1-410 (1).

(4)(a) UPON RECEIPT OF THE MOTION, THE COURT SHALL DIRECT THE PROSECUTION TO RESPOND WITHIN TWENTY-ONE DAYS OR REQUEST ADDITIONAL TIME FOR GOOD CAUSE SHOWN. IF A RESPONSE IS NOT FILED, THE MOTION IS DEEMED UNOPPOSED, AND THE COURT SHALL GRANT THE MOTION. IF THE PROSECUTION OPPOSES THE MOTION, IT SHALL ALLEGE, IN GOOD FAITH, THE FACTS UPON WHICH IT BASES ITS OPPOSITION. IF THE RESPONSE RAISES AN ISSUE OF MATERIAL FACT, THE COURT SHALL SET THE MATTER FOR AN EVIDENTIARY HEARING.

(b) UNLESS THE PROSECUTION PROVES BY A PREPONDERANCE OF THE EVIDENCE THAT THE DEFENDANT WILL NOT SUFFER AN IMMIGRATION CONSEQUENCE OR THAT THE GUILTY PLEA WAS CONSTITUTIONALLY ENTERED, THE COURT SHALL GRANT THE MOTION.

(c) FOR CLAIMS RAISED PURSUANT TO SUBSECTION (3)(b)(I) OF THIS SECTION, THE PROSECUTION CAN NEITHER RAISE AN ISSUE OF MATERIAL FACT TO OBTAIN AN EVIDENTIARY HEARING NOR DEFEAT A CLAIM AT THE HEARING BY RELYING ON WRITTEN DOCUMENTS, SUCH AS A DEFERRED JUDGMENT AGREEMENT, PLEA PAPERWORK, OR TRANSCRIPT OF A COURT COLLOQUY, UNLESS THOSE DOCUMENTS CLEARLY SHOW THAT THE DEFENDANT WAS INFORMED THAT THE IMMIGRATION CONSEQUENCES RESULTING FROM A GUILTY PLEA WOULD REMAIN DESPITE THE SUBSEQUENT WITHDRAWAL OF THAT GUILTY PLEA AND THE DISMISSAL OF THE CHARGES WITH PREJUDICE.

(5) IF THE DEFENDANT SUCCEEDS IN CHALLENGING A GUILTY PLEA UNDER SUBSECTION (3) OF THIS SECTION, THE COURT SHALL VACATE THE GUILTY PLEA AS CONSTITUTIONALLY INFIRM. THE ORDER CONSTITUTES AN

ADDITIONAL INDEPENDENT BASIS FOR THE VACATUR OF THE GUILTY PLEA AND DOES NOT RESULT IN THE REINSTATEMENT OF CHARGES.

SECTION 2. Appropriation. (1) For the 2019-20 state fiscal year, \$543,461 is appropriated to the judicial department. This appropriation is from the general fund and is based on the assumption that the department will require an additional 4.8 FTE. To implement this act, the department may use this appropriation for trial court programs.

(2) For the 2019-20 state fiscal year, \$55,139 is appropriated to the department of law for use by the appellate unit. This appropriation is from the general fund and is based on the assumption that the department will require an additional 0.6 FTE.

SECTION 3. Applicability. This act applies to charges dismissed before, on, or after the effective date of this act.

SECTION 4. Safety clause. The general assembly hereby finds,

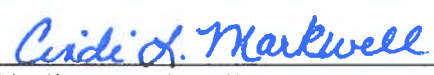
determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.



Leroy M. Garcia
PRESIDENT OF
THE SENATE



KC Becker
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

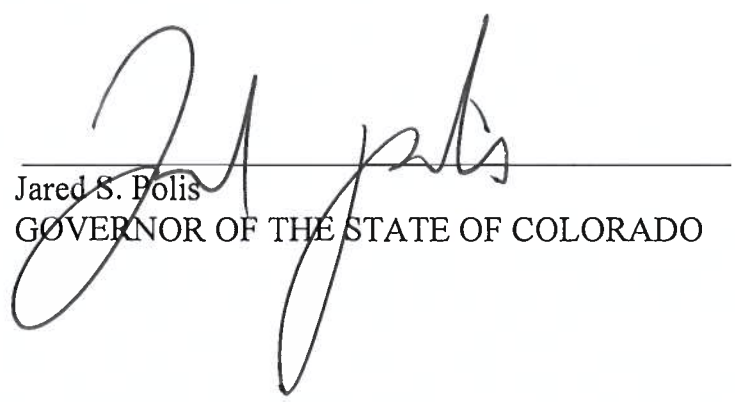


Cindi L. Markwell
SECRETARY OF
THE SENATE



Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED May 28, 2019 at 1:22 p.m.
(Date and Time)



Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO