

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 19-0422.02 Jerry Barry x4341

SENATE BILL 19-030

SENATE SPONSORSHIP

Gonzales,

HOUSE SPONSORSHIP

Tipper,

Senate Committees

Judiciary
Appropriations

House Committees

A BILL FOR AN ACT

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

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill finds that some criminal defendants who, when they entered a guilty plea in connection with a deferred judgment, were not advised that there may be additional penalties that attach to the plea even if the plea is later withdrawn and the case is dismissed. These defendants did not knowingly, intelligently, and voluntarily enter the plea of guilty as required by law. The bill authorizes these persons to petition the court

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
Amended 2nd Reading
April 16, 2019

for an order vacating the guilty plea.

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

2 SECTION 1. In Colorado Revised Statutes, add 18-1-110.5 as
3 follows:

4 18-1-410.5. Relief from improperly entered guilty pleas -
5 legislative declaration. (1) THE GENERAL ASSEMBLY FINDS THAT:

6 (a) A CRIMINAL DEFENDANT CANNOT CHALLENGE AN
7 UNCONSTITUTIONAL GUILTY PLEA WHEN THAT PLEA HAS BEEN
8 WITHDRAWN AND THE UNDERLYING CHARGES DISMISSED FOLLOWING THE
9 SUCCESSFUL COMPLETION OF A DEFERRED JUDGMENT;

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

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

24 (2) AT ANY TIME FOLLOWING THE WITHDRAWAL OF THE GUILTY
25 PLEA AND DISMISSAL OF THE CHARGES UPON SUCCESSFUL COMPLETION OF

1 A DEFERRED JUDGMENT, A CRIMINAL DEFENDANT MAY CHALLENGE THE
2 GUILTY PLEA ON THE GROUNDS SET FORTH IN SUBSECTION (3) OF THIS
3 SECTION. THE COURT IN WHICH THE GUILTY PLEA WAS ORIGINALLY
4 ENTERED HAS JURISDICTION AND AUTHORITY TO DECIDE THE MOTION.

5 (3) A DEFENDANT MOVING TO VACATE A GUILTY PLEA THAT HAS
6 ALREADY BEEN WITHDRAWN FOLLOWING THE SUCCESSFUL COMPLETION
7 OF A DEFERRED JUDGMENT MUST, IN GOOD FAITH, ALLEGE THE
8 FOLLOWING:

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

12 (b) THE GUILTY PLEA WAS OBTAINED IN VIOLATION OF THE
13 CONSTITUTION OR LAWS OF THE UNITED STATES OR OF THIS STATE UNDER
14 ONE OR MORE OF THE FOLLOWING GROUNDS:

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

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

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

23 (4) (a) UPON RECEIPT OF THE MOTION, THE COURT SHALL DIRECT
24 THE PROSECUTION TO RESPOND WITHIN TWENTY-ONE DAYS OR REQUEST
25 ADDITIONAL TIME FOR GOOD CAUSE SHOWN. IF A RESPONSE IS NOT FILED,
26 THE MOTION IS DEEMED UNOPPOSED, AND THE COURT SHALL GRANT THE
27 MOTION. IF THE PROSECUTION OPPOSES THE MOTION, IT SHALL ALLEGE, IN

1 GOOD FAITH, THE FACTS UPON WHICH IT BASES ITS OPPOSITION. IF THE
2 RESPONSE RAISES AN ISSUE OF MATERIAL FACT, THE COURT SHALL SET THE
3 MATTER FOR AN EVIDENTIARY HEARING.

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

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

18 (5) IF THE DEFENDANT SUCCEEDS IN CHALLENGING A GUILTY PLEA
19 UNDER SUBSECTION (3) OF THIS SECTION, THE COURT SHALL VACATE THE
20 GUILTY PLEA AS CONSTITUTIONALLY INFIRM. THE ORDER CONSTITUTES AN
21 ADDITIONAL INDEPENDENT BASIS FOR THE VACATUR OF THE GUILTY PLEA
22 AND DOES NOT RESULT IN THE REINSTATEMENT OF CHARGES.

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

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

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

7 **SECTION 4. Safety clause.** The general assembly hereby finds,
8 determines, and declares that this act is necessary for the immediate
9 preservation of the public peace, health, and safety.