

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

**REVISED**

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

LLS NO. 19-0422.02 Jerry Barry x4341

**SENATE BILL 19-030**

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**SENATE SPONSORSHIP**

**Gonzales,** Court, Fenberg, Fields, Hill, Lee, Moreno, Williams A., Winter

**HOUSE SPONSORSHIP**

**Tipper,**

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**Senate Committees**

Judiciary  
Appropriations

**House Committees**

Judiciary  
Appropriations

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**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judgment, were not advised that there may be additional penalties that attach to the plea even if the plea is later withdrawn and the case is dismissed.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.

HOUSE  
2nd Reading Unamended  
April 26, 2019

SENATE  
Amended 3rd Reading  
April 17, 2019

SENATE  
Amended 2nd Reading  
April 16, 2019

for an order vacating the guilty plea.

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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8 WITHDRAWN AND THE UNDERLYING CHARGES DISMISSED FOLLOWING THE  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 OR THE DISMISSAL  
10 OF CHARGES PURSUANT TO SECTION 18-18-404 (3) PRIOR TO ITS REPEAL IN  
11 2010;

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

22 (c) IN THE ABSENCE OF AN APPROPRIATE MECHANISM, MANY  
23 NONCITIZEN DEFENDANTS HAVE BEEN UNFAIRLY DEPRIVED OF THE  
24 OPPORTUNITY TO CHALLENGE GUILTY PLEAS THAT WERE ENTERED IN  
25 VIOLATION OF THE CONSTITUTION OR LAWS OF THE UNITED STATES OR OF

1 THIS STATE THAT RESULTED IN ADVERSE IMMIGRATION CONSEQUENCES.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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