

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

REENGROSSED

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

LLS NO. 19-0422.02 Jerry Barry x4341

SENATE BILL 19-030

SENATE SPONSORSHIP

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

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judgment, were not advised that there may be additional penalties that attach to the plea even if the plea is later withdrawn and the case is dismissed.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 3rd Reading
April 17, 2019

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8 **WITHDRAWN AND THE UNDERLYING CHARGES DISMISSED FOLLOWING THE**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 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.