

SB030 L.001

SENATE COMMITTEE OF REFERENCE AMENDMENT

Committee on Judiciary.SB19-030 be amended as follows:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute:

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

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

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9 WITHDRAWN AND THE UNDERLYING CHARGES DISMISSED FOLLOWING THE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

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

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

25 (2) AT ANY TIME FOLLOWING THE WITHDRAWAL OF THE GUILTY
26 PLEA AND DISMISSAL OF THE CHARGES UPON SUCCESSFUL COMPLETION OF
27 A DEFERRED JUDGMENT, A CRIMINAL DEFENDANT MAY CHALLENGE THE
28 GUILTY PLEA ON THE GROUNDS SET FORTH IN SUBSECTION (3) OF THIS
29 SECTION. THE COURT IN WHICH THE GUILTY PLEA WAS ORIGINALLY
30 ENTERED HAS JURISDICTION AND AUTHORITY TO DECIDE THE MOTION.

31 (3) A DEFENDANT MOVING TO VACATE A GUILTY PLEA THAT HAS
32 ALREADY BEEN WITHDRAWN FOLLOWING THE SUCCESSFUL COMPLETION
33 OF A DEFERRED JUDGMENT MUST, IN GOOD FAITH, ALLEGE THE
34 FOLLOWING:

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

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

41 (I) THE DEFENDANT WAS NOT INFORMED THAT THE GUILTY PLEA

1 WOULD CONTINUE TO RESULT IN ADVERSE IMMIGRATION CONSEQUENCES
2 DESPITE THE SUBSEQUENT WITHDRAWAL OF THE GUILTY PLEA AND
3 DISMISSAL OF THE CHARGES WITH PREJUDICE;

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

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

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

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

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

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

35 **SECTION 2. Applicability.** This act applies to charges dismissed
36 before, on, or after the effective date of this act.

37 **SECTION 3. Safety clause.** The general assembly hereby finds,
38 determines, and declares that this act is necessary for the immediate
39 preservation of the public peace, health, and safety."

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