

ASSEMBLY BILL NO. 394—ASSEMBLYMEN BUCKLEY, PARKS, MCCLAIN, KOIVISTO, GIUNCHIGLIANI, ANDERSON, ANGLE, ARBERRY, BACHE, BEERS, BROWER, CARPENTER, CEGAVSKE, CHOWNING, CLABORN, COLLINS, DE BRAGA, DINI, FREEMAN, GIBBONS, GOLDWATER, HETTRICK, LEE, LESLIE, MANENDO, MARVEL, MORTENSON, NEIGHBORS, OCEGUERA, PARNELL, PERKINS, PRICE, SMITH, TIFFANY, VON TOBEL AND WILLIAMS

MARCH 16, 2001

Referred to Committee on Judiciary

SUMMARY—Requires court to advise defendant of immigration consequences of plea of guilty or nolo contendere. (BDR 14-1088)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to criminal procedure; requiring a court to advise a defendant of the immigration consequences of a plea of guilty or nolo contendere; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** NRS 174.035 is hereby amended to read as follows:
2 174.035 1. A defendant may plead not guilty, guilty, guilty but
3 mentally ill or, with the consent of the court, nolo contendere. The court
4 may refuse to accept a plea of guilty or guilty but mentally ill.
5 2. If a plea of guilty is made in a written plea agreement, the
6 agreement must be in substantially the form prescribed in NRS 174.063.
7 3. If a plea of guilty or guilty but mentally ill is made orally, the court
8 shall not accept such a plea or a plea of nolo contendere without first
9 addressing the defendant personally and ~~determining~~ ***(a) Determining*** that the plea is made voluntarily with understanding of
10 the nature of the charge and consequences of the plea ~~+~~ ***;*** and
11 ***(b) Advising the defendant that, if he is not a citizen of the United***
12 ***States, a plea of guilty, guilty but mentally ill or nolo contendere for the***
13 ***offense with which he is charged may, in addition to other consequences***
14 ***provided for by federal law, result in certain immigration consequences,***
15 ***including, without limitation:***
16



* A B 3 9 4 R 1 *

- (1) *Removal;*
(2) *Deportation;*
(3) *Exclusion from entry into this country; or*
(4) *Rejection or denial of an application for naturalization.*

4. In addition ~~to~~ *to the requirements set forth in subsection 3, the* court shall not accept a plea of guilty but mentally ill without complying with the provisions of NRS 174.041.

~~3-1~~ 5. With the consent of the court and the district attorney, a defendant may enter a conditional plea of guilty, guilty but mentally ill or nolo contendere, reserving in writing the right, on appeal from the judgment, to a review of the adverse determination of any specified pretrial motion. A defendant who prevails on appeal must be allowed to withdraw the plea.

~~4-1~~ 6. A plea of guilty but mentally ill is not a defense to the alleged offense. A defendant who enters such a plea is subject to the same penalties as a defendant who pleads guilty.

~~5-1~~ 7. If a defendant refuses to plead, if the court refuses to accept a plea of guilty or guilty but mentally ill or if a defendant corporation fails to appear, the court shall enter a plea of not guilty.

~~6-1~~ 8. A defendant may not enter a plea of guilty or guilty but mentally ill pursuant to a plea bargain for an offense punishable as a felony for which:

(a) Probation is not allowed; or

(b) The maximum prison sentence is more than 10 years,

unless the plea bargain is set forth in writing and signed by the defendant, the defendant's attorney, if he is represented by counsel, and the prosecuting attorney.

Sec. 2. NRS 174.063 is hereby amended to read as follows:

174.063 1. If a plea of guilty is made in a written plea agreement, the agreement must be substantially in the following form:

Case No.

Dept. No.

IN THE JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY OF,

The State of Nevada
PLAINTIFF,

v.

(Name of defendant)
DEFENDANT.

GUILTY PLEA AGREEMENT

I hereby agree to plead guilty to: (List charges to which defendant is pleading guilty), as more fully alleged in the charging document attached hereto as Exhibit 1.



* A B 3 9 4 R 1 *

1 My decision to plead guilty is based upon the plea agreement in this case
2 which is as follows:
3 (State the terms of the agreement.)
4

5 CONSEQUENCES OF THE PLEA

6 I understand that by pleading guilty I admit the facts which support all
7 the elements of the offenses to which I now plead as set forth in Exhibit 1.

8 I understand that as a consequence of my plea of guilty I may be
9 imprisoned for a period of not more than (maximum term of imprisonment)
10 and that I (may or will) be fined up to (maximum amount of fine). I
11 understand that the law requires me to pay an administrative assessment
12 fee.

13 I understand that, if appropriate, I will be ordered to make restitution to
14 the victim of the offenses to which I am pleading guilty and to the victim
15 of any related offense which is being dismissed or not prosecuted pursuant
16 to this agreement. I will also be ordered to reimburse the State of Nevada
17 for expenses related to my extradition, if any.

18 I understand that I (am or am not) eligible for probation for the offense
19 to which I am pleading guilty. (I understand that, except as otherwise
20 provided by statute, the question of whether I receive probation is in the
21 discretion of the sentencing judge, or I understand that I must serve a
22 mandatory minimum term of (term of imprisonment) or pay a minimum
23 mandatory fine of (amount of fine) or serve a mandatory minimum term
24 (term of imprisonment) and pay a minimum mandatory fine of (amount of
25 fine).)

26 I understand that if more than one sentence of imprisonment is imposed
27 and I am eligible to serve the sentences concurrently, the sentencing judge
28 has the discretion to order the sentences served concurrently or
29 consecutively.

30 I understand that information regarding charges not filed, dismissed
31 charges or charges to be dismissed pursuant to this agreement may be
32 considered by the judge at sentencing.

33 I have not been promised or guaranteed any particular sentence by
34 anyone. I know that my sentence is to be determined by the court within
35 the limits prescribed by statute. I understand that if my attorney or the State
36 of Nevada or both recommend any specific punishment to the court, the
37 court is not obligated to accept the recommendation.

38 I understand that the division of parole and probation of the department
39 of motor vehicles and public safety may or will prepare a report for the
40 sentencing judge before sentencing. This report will include matters
41 relevant to the issue of sentencing, including my criminal history. I
42 understand that this report may contain hearsay information regarding my
43 background and criminal history. My attorney (if represented by counsel)
44 and I will each have the opportunity to comment on the information
45 contained in the report at the time of sentencing.

46 ***I understand that as a consequence of my plea of guilty, if I am not a***
47 ***citizen of the United States, I may, in addition to other consequences***
48 ***provided for by federal law, be removed, deported, excluded from entry***
49 ***into the United States or denied naturalization.***



* A B 3 9 4 R 1 *

WAIVER OF RIGHTS

By entering my plea of guilty, I understand that I have waived the following rights and privileges:

1. The constitutional privilege against self-incrimination, including the right to refuse to testify at trial, in which event the prosecution would not be allowed to comment to the jury about my refusal to testify.

2. The constitutional right to a speedy and public trial by an impartial jury, free of excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the assistance of an attorney, either appointed or retained. At trial, the state would bear the burden of proving beyond a reasonable doubt each element of the offense charged.

3. The constitutional right to confront and cross-examine any witnesses who would testify against me.

4. The constitutional right to subpoena witnesses to testify on my behalf.

5. The constitutional right to testify in my own defense.

6. The right to appeal the conviction, with the assistance of an attorney, either appointed or retained, unless the appeal is based upon reasonable constitutional, jurisdictional or other grounds that challenge the legality of the proceedings and except as otherwise provided in subsection ~~¶~~ 5 of NRS 174.035.

VOLUNTARINESS OF PLEA

I have discussed the elements of all the original charges against me with my attorney (if represented by counsel) and I understand the nature of these charges against me.

I understand that the state would have to prove each element of the charge against me at trial.

I have discussed with my attorney (if represented by counsel) any possible defenses and circumstances which might be in my favor.

All of the foregoing elements, consequences, rights and waiver of rights have been thoroughly explained to me by my attorney (if represented by counsel).

I believe that pleading guilty and accepting this plea bargain is in my best interest and that a trial would be contrary to my best interest.

I am signing this agreement voluntarily, after consultation with my attorney (if represented by counsel) and I am not acting under duress or coercion or by virtue of any promises of leniency, except for those set forth in this agreement.

I am not now under the influence of intoxicating liquor, a controlled substance or other drug which would in any manner impair my ability to comprehend or understand this agreement or the proceedings surrounding my entry of this plea.

My attorney (if represented by counsel) has answered all my questions regarding this guilty plea agreement and its consequences to my satisfaction and I am satisfied with the services provided by my attorney.



* A B 3 9 4 R 1 *

1 Dated: This day of the month of of the year

2
3
4 Defendant.

5
6 Agreed to on this day of the month of of the year

7
8
9 Deputy District Attorney.

10
11 2. If the defendant is represented by counsel, the written plea
12 agreement must also include a certificate of counsel that is substantially in
13 the following form:

14
15 CERTIFICATE OF COUNSEL

16 I, the undersigned, as the attorney for the defendant named herein and as
17 an officer of the court hereby certify that:

18 1. I have fully explained to the defendant the allegations contained in
19 the charges to which guilty pleas are being entered.

20 2. I have advised the defendant of the penalties for each charge and the
21 restitution that the defendant may be ordered to pay.

22 3. All pleas of guilty offered by the defendant pursuant to this
23 agreement are consistent with all the facts known to me and are made with
24 my advice to the defendant and are in the best interest of the defendant.

25 4. To the best of my knowledge and belief, the defendant:

26 (a) Is competent and understands the charges and the consequences of
27 pleading guilty as provided in this agreement.

28 (b) Executed this agreement and will enter all guilty pleas pursuant
29 hereto voluntarily.

30 (c) Was not under the influence of intoxicating liquor, a controlled
31 substance or other drug at the time of the execution of this agreement.

32 Dated: This day of the month of of the year

33
34
35 Attorney for defendant.

36
37 **Sec. 3.** NRS 177.015 is hereby amended to read as follows:
38 177.015 The party aggrieved in a criminal action may appeal only as
39 follows:

40 1. Whether that party is the state or the defendant:

41 (a) To the district court of the county from a final judgment of the
42 justice's court.

43 (b) To the supreme court from an order of the district court granting a
44 motion to dismiss, a motion for acquittal or a motion in arrest of judgment,
45 or granting or refusing a new trial.

46 2. The state may, upon good cause shown, appeal to the supreme court
47 from a pretrial order of the district court granting or denying a motion to
48 suppress evidence made pursuant to NRS 174.125. Notice of the appeal
49 must be filed with the clerk of the district court within 2 judicial days and



1 with the clerk of the supreme court within 5 judicial days after the ruling
2 by the district court. The clerk of the district court shall notify counsel for
3 the defendant or, in the case of a defendant without counsel, the defendant
4 within 2 judicial days after the filing of the notice of appeal. The supreme
5 court may establish such procedures as it determines proper in requiring
6 the appellant to make a preliminary showing of the propriety of the appeal
7 and whether there may be a miscarriage of justice if the appeal is not
8 entertained. If the supreme court entertains the appeal, or if it otherwise
9 appears necessary, it may enter an order staying the trial for such time as
10 may be required.

11 3. The defendant only may appeal from a final judgment or verdict in a
12 criminal case.

13 4. Except as otherwise provided in subsection ~~4~~ 5 of NRS 174.035,
14 the defendant in a criminal case shall not appeal a final judgment or verdict
15 resulting from a plea of guilty, guilty but mentally ill or nolo contendere
16 that the defendant entered into voluntarily and with a full understanding of
17 the nature of the charge and the consequences of the plea, unless the appeal
18 is based upon reasonable constitutional, jurisdictional or other grounds that
19 challenge the legality of the proceedings. The supreme court may establish
20 procedures to require the defendant to make a preliminary showing of the
21 propriety of the appeal.

22 **Sec. 4.** 1. The amendatory provisions of this act do not apply to a
23 plea of guilty, plea of guilty but mentally ill or a plea of nolo contendere
24 entered into before October 1, 2001.

25 2. The amendatory provisions of this act do not apply to a written plea
26 agreement entered into before October 1, 2001.

