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**AB-1343 Criminal procedure: defense counsel.** (2015-2016)

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**Assembly Bill No. 1343**

**CHAPTER 705**

An act to add Sections 1016.2 and 1016.3 to the Penal Code, relating to criminal procedure.

[ Approved by Governor October 09, 2015. Filed with Secretary of State October 09, 2015. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 1343, Thurmond. Criminal procedure: defense counsel.

Existing law requires the court in a noncapital case, if the defendant appears for arraignment without counsel, to inform the defendant that it is his or her right to have counsel before being arraigned and to ask the defendant if he or she desires the assistance of counsel. If the defendant desires and is unable to employ counsel, the court is required to assign counsel to defend him or her as provided. Existing law requires courts, prior to acceptance of a plea of guilty or nolo contendere by a defendant, to inform the defendant that a conviction of the offense charged may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

This bill would require defense counsel to provide accurate and affirmative advice about the immigration consequences of a proposed disposition, and when consistent with the goals of and with the informed consent of the defendant, and with professional standards, defend against those consequences. The bill would require the prosecution, in the interests of justice, to consider the avoidance of adverse immigration consequences in the plea negotiation process as one factor in an effort to reach a just resolution. By requiring an increased level of service, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

**SECTION 1.** Section 1016.2 is added to the Penal Code, to read:

**1016.2.** The Legislature finds and declares all of the following:

(a) In *Padilla v. Kentucky*, 559 U.S. 356 (2010), the United States Supreme Court held that the Sixth Amendment requires defense counsel to provide affirmative and competent advice to noncitizen defendants regarding the potential immigration consequences of their criminal cases. California courts also have held that defense counsel must investigate and advise

regarding the immigration consequences of the available dispositions, and should, when consistent with the goals of and informed consent of the defendant, and as consistent with professional standards, defend against adverse immigration consequences (People v. Soriano, 194 Cal.App.3d 1470 (1987), People v. Barocio, 216 Cal.App.3d 99 (1989), People v. Bautista, 115 Cal.App.4th 229 (2004)).

(b) In Padilla v. Kentucky, the United States Supreme Court sanctioned the consideration of immigration consequences by both parties in the plea negotiating process. The court stated that "informed consideration of possible deportation can only benefit both the State and noncitizen defendants during the plea-bargaining process. By bringing deportation consequences into this process, the defense and prosecution may well be able to reach agreements that better satisfy the interests of both parties."

(c) In Padilla v. Kentucky, the United States Supreme Court found that for noncitizens, deportation is an integral part of the penalty imposed for criminal convictions. Deportation may result from serious offenses or a single minor offense. It may be by far the most serious penalty flowing from the conviction.

(d) With an accurate understanding of immigration consequences, many noncitizen defendants are able to plead to a conviction and sentence that satisfy the prosecution and court, but that have no, or fewer, adverse immigration consequences than the original charge.

(e) Defendants who are misadvised or not advised at all of the immigration consequences of criminal charges often suffer irreparable damage to their current or potential lawful immigration status, resulting in penalties such as mandatory detention, deportation, and permanent separation from close family. In some cases, these consequences could have been avoided had counsel provided informed advice and attempted to defend against such consequences.

(f) Once in removal proceedings, a noncitizen may be transferred to any of over 200 immigration detention facilities across the country. Many criminal offenses trigger mandatory detention, so that the person may not request bond. In immigration proceedings, there is no court-appointed right to counsel and as a result, the majority of detained immigrants go unrepresented. Immigration judges often lack the power to consider whether the person should remain in the United States in light of equitable factors such as serious hardship to United States citizen family members, length of time living in the United States, or rehabilitation.

(g) The immigration consequences of criminal convictions have a particularly strong impact in California. One out of every four persons living in the state is foreign-born. One out of every two children lives in a household headed by at least one foreign-born person. The majority of these children are United States citizens. It is estimated that 50,000 parents of California United States citizen children were deported in a little over two years. Once a person is deported, especially after a criminal conviction, it is extremely unlikely that he or she ever is permitted to return.

(h) It is the intent of the Legislature to codify Padilla v. Kentucky and related California case law and to encourage the growth of such case law in furtherance of justice and the findings and declarations of this section.

**SEC. 2.** Section 1016.3 is added to the Penal Code, to read:

**1016.3.** (a) Defense counsel shall provide accurate and affirmative advice about the immigration consequences of a proposed disposition, and when consistent with the goals of and with the informed consent of the defendant, and consistent with professional standards, defend against those consequences.

(b) The prosecution, in the interests of justice, and in furtherance of the findings and declarations of Section 1016.2, shall consider the avoidance of adverse immigration consequences in the plea negotiation process as one factor in an effort to reach a just resolution.

(c) This code section shall not be interpreted to change the requirements of Section 1016.5, including the requirement that no defendant shall be required to disclose his or her immigration status to the court.

**SEC. 3.** If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.