



1995 ASSEMBLY BILL 862

February 7, 1996 - Introduced by LAW REVISION COMMITTEE. Referred to Committee on Judiciary.

1 **AN ACT to renumber and amend** 971.08 (2); and **to create** 971.08 (2) (b) of the
2 statutes; **relating to:** the grounds for withdrawal of a plea of guilty or no
3 contest.

Analysis by the Legislative Reference Bureau

Current law provides a procedure for a judge to follow when accepting pleas of guilty or no contest. Generally, a person who has entered such a plea may not later withdraw the plea unless he or she entered the plea involuntarily or unknowingly (without full knowledge and understanding of the nature of the charge and the consequences of entering the plea). One part of the plea procedure requires a judge to advise the defendant that, if he or she is not a citizen of the United States, a plea of guilty or no contest for the offense with which he or she is charged may have certain immigration consequences (specifically, may result in deportation, the exclusion from admission to this country or the denial of naturalization under federal law). Current law also provides that if a judge fails to advise a defendant of the possible immigration consequences of a plea and the defendant later shows that the plea is likely to result in his or her deportation, exclusion from admission to this country or denial of naturalization, the defendant is entitled to withdraw the plea without having to show that he or she entered the plea involuntarily or unknowingly.

Current statutory law does not specify whether a defendant who was not advised by the judge of the possible immigration consequences of the plea is entitled to withdraw his or her plea if he or she actually knew of the possible immigration consequences. However, the court of appeals has held that, because current law also provides that a conviction is not affected by any formal errors that do not make the conviction unfair or unjust (prejudice the defendant), a defendant who was not advised by a judge of the possible immigration consequences of a plea but who knew of those possible consequences is not entitled to withdraw his or her plea unless the defendant was prejudiced by the judge's failure to advise the defendant of the possible immigration consequences of the plea. *State v. Chavez*, 175 Wis. 2d 366, 371

(Ct. App. 1993). This bill codifies the court of appeals decision by providing that a defendant who was not advised by the judge of the possible immigration consequences of his or her plea but who knew of those possible consequences is not entitled to withdraw his or her plea without showing that the judge's failure to advise the defendant of the possible immigration consequences of the plea prejudiced the defendant.

For further information, see the NOTES provided by the law revision committee of the joint legislative council.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is introduced by the law revision committee under s. 13.83 (1) (c), stats. After careful consideration of the various provisions of the bill, the law revision committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

1 **SECTION 1.** 971.08 (2) of the statutes is renumbered 971.08 (2) (a) and amended
2 to read:

3 971.08 (2) (a) If Except as provided in par. (b), if a court fails to advise a
4 defendant as required by sub. (1) (c) and a defendant later shows that the plea is
5 likely to result in the defendant's deportation, exclusion from admission to this
6 country or denial of naturalization, the court on the defendant's motion shall vacate
7 any applicable judgment against the defendant and permit the defendant to
8 withdraw the plea and enter another plea.

9 (c) This subsection does not limit the ability to withdraw a plea of guilty or no
10 contest on any other grounds.

11 **SECTION 2.** 971.08 (2) (b) of the statutes is created to read:

12 971.08 (2) (b) If a defendant who moves to withdraw his or her plea under par.
13 (a) knew at the time of the plea that the plea might result in the defendant's
14 deportation, exclusion from admission to this country or denial of naturalization, the
15 court may permit the defendant to withdraw the plea and enter another plea only if

1 the defendant shows that the judge's failure to advise the defendant as required by
2 sub. (1) (c) prejudiced the defendant.

NOTE: Under current law, if a court fails to advise a defendant of the possible immigration consequences of a plea and the defendant later shows that the plea is likely to result in his or her deportation, exclusion from admission to this country or denial of naturalization, the defendant may withdraw the plea without having to show that he or she entered the plea involuntarily or unknowingly.

This SECTION, which codifies *State v. chavez*, 175 Wis. 2d 366, 498 N.W. 2d 887 (Ct. App. 1993), provides that a defendant who was not advised by the judge of the possible immigration consequences of his or her plea, but knew of those possible consequences, is not entitled to withdraw his or her plea without showing that the judge's failure to advise the defendant of the possible immigration consequences of the plea prejudiced the defendant.

3 **SECTION 3. Initial applicability.**

4 (1) This act first applies to pleas of guilty or no contest that entered on the
5 effective date of this subsection.

6 (END)