

(S. B. 1224)

**(No. 5)**

(Approved January 1, 2003)

**AN ACT**

To amend Rule 70 of the Rules of Criminal Procedure of 1963, as amended, in order to require that the Court of First Instance, prior to accepting a plea of guilty, advises the defendant of the possible risks regarding his/her legal status that he/she could face if he/she is an immigrant legally domiciled in Puerto Rico, and is convicted of the crime of which he/she is charged.

**STATEMENT OF MOTIVES**

At present, Rule 70 of the Rules of Criminal Procedure in effect, 34 L.P.R.A. App. II, establishes as the duty of the Court, that prior to accepting a plea of guilty, it must make a determination that it is made voluntarily, and with an understanding of the nature of the charge and of the consequences of said plea.

Said Rule 70, however, does not specifically contemplate the possibility that the defendant could be an immigrant legally-domiciled in Puerto Rico and the fact that this could require the Court to take a special action. This has brought about as a result that an individual who is not a citizen of the United States, and is accused of a crime under the laws of Puerto Rico, chooses to enter a plea of guilty unaware of the fact that a conviction for the crime he/she is accused of could be sufficient grounds for deportation, exclusion for admission to the United States or the denial of naturalization.

Pursuant to the Federal legislation on immigration, if a person is convicted of a criminal violation and is a legally domiciled alien, he/she

faces the risk of deportation. See 8 U.S.C. § 1101, *et seq.* Other jurisdictions of the United States with a high flow of immigrants have adopted rules so that all judges will carefully evaluate and make additional warnings in cases of pleas of guilty for felonies when the defendant is a foreigner. Rule 3.172(c)(viii) of the Rules of Criminal Procedure provides that every judge in the process of accepting a plea of guilty in cases involving a felony, must as part of the judicial examination on the plea, ask if the defendant if she/he is a U.S. citizen and advise him/her that a plea of guilty could imply a deportation process. The failure to make this warning constitutes sufficient grounds to render the plea ineffective because it was not free and voluntary.

Rule 70 of the Rules of Criminal Procedure in effect are of constitutional importance. It has thus been recognized by the Supreme Court of Puerto Rico in *Pueblo v. Mojica Cruz*, 115 D.P.R. 569 (1984) and *Pueblo v. Ayala Rodríguez*, 116 D.P.R. 382 (1985). In the first of these cases, the Supreme Court of Puerto Rico established the procedure to be followed in cases involving plea bargaining. Among the most important aspects set forth by the Court in the jurisprudence indicated above, is the duty of every judge to verify that the defendants plea is voluntary and intelligent. The judge must also ascertain that the plea bargaining was made according to the Law and ethics and that the acceptance of the plea bargaining is in the best interest of justice. See Nevares-Muñiz, D., *Sumario de Derecho Procesal Penal Puertorriqueño*, Third Edition Revised, *Instituto para el Desarrollo del Derecho, Inc.*, Hato Rey, P.R. 1992, p. 99-101

The Supreme Court has determined that the two purposes of this rule are: (a) to assist the judge who entertains the case in making the constitutionally required determination that a defendant's plea of guilty is truly voluntary, and (b) to produce a complete record at the time the guilty

plea is entered all of the factors that determine it was voluntary and the awareness of its consequences. *Díaz Díaz v. Alcaide*, D.P.R. 846 (1973). *In Pueblo v. Torres Nieves*, 105 D.P.R. 340 (1976), the Supreme Court determined that all constitutional or statutory rights may be waived by the defendant but that the waiver must be express, personal, voluntary and intelligent, when one of these rights is abdicated.

The United States Supreme Court in *Brady vs. United States*, 397 U.S. 742 (1970) validated a determination made by Judge Tuttle of the Circuit Court of Appeals for the Fifth Circuit, as the standard to determine the voluntary nature of a plea bargaining of guilt when it stated:

" [A] plea of guilty entered by one fully aware of the direct consequences, including the actual value of any commitment made to him by the court, prosecutor, or his own counsel, must stand unless induced by threats (or promises to discontinue improper harassment), misrepresentation (including unfulfilled or unfulfillable promises), or perhaps by promises that are by their nature improper as having no proper relationship to the prosecutor's business (e.g. bribes).' 242 F.2d at page 115."

Therefore and given the high number of immigrants legally domiciled on the Island of Puerto Rico, and with the purpose of guarantying the right of every human being to due process of law, the Legislature deems it necessary to require the Court of First Instance that in the cases in which a plea of guilt is involved, the defendant is advised of the particular risks that he/she would face if he/she is an immigrant legally domiciled in Puerto Rico and is convicted for the crime for which he/she is accused, in addition to what is at present contained in said Rule 70.

In view of the possibility that prior to choosing to enter a plea of guilt, the accused foreigner were unaware of the potential consequences that a conviction could have on his/her status as a legally-domiciled immigrant,

this Legislature deems it imperative for the Court to advise the defendant on the same, and grants him/her a reasonable time to determine if a plea of guilty is the most appropriate option.

It is the intention of this Legislature that no defendant shall be required to reveal his/her legal status to the Court at the time of entering the plea.

**BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:**

Section 1.- A second and third paragraph is hereby added to Rule 70 of the Rules of Criminal Procedure of 1963, as amended, to read as follows:

**"RULE 70. PLEA OF GUILTY; DUTY OF THE COURT**

The Court shall not accept the plea of guilty without first determining that it is made voluntarily, with understanding of the nature of the charge and of the consequence of said plea.

The Court, prior to accepting a plea of guilty in cases of a felony, shall also, for the record, advise the defendant of the following:

"If you are not a U.S. citizen, you are hereby advised that a conviction for the crime of which you are accused could entail deportation, exclusion from entering the United States or denial of naturalization pursuant to the laws of the United States."

If requested, the Court shall grant the defendant additional time to consider whether the plea of guilty is the adequate action pursuant to the warning set forth in this Rule."

Section 2.- This Act shall take effect immediately after its approval.

## CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 5 (S.B. 1224) of the 4<sup>th</sup> Session of the 14<sup>th</sup> Legislature of Puerto Rico:

**AN ACT** to amend Rule 70 of the Rules of Criminal Procedure of 1963, as amended, in order to require that the Court of First Instance, prior to accepting a plea of guilty, advises the defendant of the possible risks regarding his/her legal status that he/she could face if he/she is an immigrant legally domiciled in Puerto Rico, and is convicted of the crime of which he/she is charged,

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, today 15<sup>th</sup> of December of 2003.

Elba Rosa Rodríguez-Fuentes  
Director

