



Court Notification Bill

(S2903A)

The Problem: Immigrants have the right under the Constitution to receive immigration advice from defense counsel when facing criminal charges, due to the severe immigration consequences that can follow, including mandatory detention and deportation. In many cases, counsel who meet their duty to advise on immigration consequences can resolve cases or negotiate pleas that minimize the likelihood of deportation and preserve future eligibility for status or citizenship. But many New Yorkers do not receive accurate legal advice regarding the immigration consequences of a conviction in a criminal case, which can attach even if they are documented or have a green card.

In New York, due to the gravity of potential immigration issues that can follow from a plea, judges notify people of this risk to help ensure they make informed pleas and promptly have an opportunity to discuss the issues with their counsel. Indeed, the Court of Appeals has found that judicial notification is required under the State Constitution in felony cases, and New York state law requires the same. However, because notifications are not standardized by statute, some judges provide notifications that do more harm than good and directly conflict with defense counsel's duty to provide individualized, accurate legal advice to their clients.

Solution: The [Court Notifications Bill \(S2903A\)](#) enacts standardized court notification language such that judges cannot provide legal advice to criminal court defendants, but instead reinforce defense counsel's duty to provide individualized advice. The notification also provides an additional opportunity for the individual to become aware of the possibility of immigration consequences resulting from a plea.

- **Meaningful Representation.** Creating a robust judicial notification early in the criminal process will facilitate meaningful consultation between clients and their attorneys, afford counsel reasonable time to research and advise, and will ultimately result in fairer pleas that satisfy the objectives of both the People and the defendant.
- **Informing Immigrants of their Rights.** Judges have a critical role to play to promote compliance with the law, protect the rights of the accused, and ensure defendants enter knowing and voluntary pleas. Judicial notification to the accused of defense counsel's duty to advise on immigration consequences empowers the individual to ask their attorney about immigration issues where the attorney may have otherwise overlooked or abdicated their responsibility to investigate.
- **A Right with a Remedy.** The bill ensures that immigrants' rights violations are made right. When a judge fails to provide proper notification, pleas can be vacated through filing of a motion. This follows the example of 15 other states that provide a remedy when notification is not given, which will help prevent unlawful deportation based on unfair and unknowing pleas.