

CCDLA
“Ready in the Defense of Liberty”
Founded 1988

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March 16, 2009

Hon. Andrew J. McDonald, Senator
Hon. Michael P. Lawlor, House Representative
Committee on Judiciary
Room 2500, Legislative Office Building
Hartford, Connecticut 06106

Re: Raised House Bill No. 6579
An Act Concerning the Immigration Consequences of a Plea of Guilty or Nolo
Contendere.

Dear Chairmen and Committee Members:

The Connecticut Criminal Defense Lawyers Association (“CCDLA”) is a statewide organization of approximately 350 lawyers in both the public and private sectors dedicated to defending persons accused of criminal offenses. Founded in 1988, CCDLA works to improve the criminal justice system by insuring that the individual rights guaranteed by the Connecticut and United States Constitutions are applied fairly and equally, and that those rights are not diminished. At the same time, CCDLA strives to improve and suggest changes to the laws and procedures that apply to the criminal justice system.

CCDLA SUPPORTS EXTENDING THE TIME FRAME WITHIN WHICH AN
INDIVIDUAL MAY WITHDRAW A PLEA OF GUILTY OR NOLO
CONTENDERE PURSUANT TO C.G.S. 54-1j

C.G.S. §54-1j currently provides for a three year time limit within which a person may withdraw a plea of guilty or nolo contendere upon showing the following: (1) The Court failed to comply with the statute’s advisement mandate under subsection (a) at the time it accepted the plea; and (2) The conviction has resulted in one of the statute’s enumerated negative immigration consequences, i.e., deportation or removal from the United States, exclusion from readmission to the United States or denial of naturalization pursuant to the laws of the United States.

The three year time limit is too restrictive and should be extended to five years in accordance with the provision of House Bill 6579 for the following reasons:

1. THE CURRENT TIME RESTRICTION SERVES AS A BAR TO VALID 54-1J VIOLATION CLAIMS OCCURRING OUTSIDE THE THREE YEAR WINDOW.

As originally adopted in 1982, C.G.S. 54-1j contained no time limitation within which a non-citizen could return to court to request that his plea be vacated. Fifteen years after its adoption, in 1997, the legislature added the three year time restriction for mandatory withdrawal upon such motion. According to the 1997 legislative history, Representative Lawlor testified that the time limit would not prevent an individual from making a request to vacate a plea after the expiration of the three year window -- it would merely mean that the Court would not be required to vacate the plea. According to Representative Lawlor, once the three year time limit passed, such motions to vacate pleas would fall within the Court's discretion.

History demonstrates that courts, more often than not, will cite the current three year restriction as an automatic bar to the withdrawal of a plea. This means that the most direct and expedient form of post-conviction relief is unavailable after three years from the time the plea was accepted. As a result, non-citizens must resort to other more onerous legal procedures to address their immigration advisement claims. Judicial resources must then be expended to handle these matters as they evolve into habeas petitions, writs of error coram nobis, or other motions for post-conviction relief.

The extension of the three year limit to five years will reduce the burden for those non-citizens seeking relief and it will help conserve scarce Judicial Branch resources.

2. THERE IS NO PRACTICAL REASON TO MAINTAIN A THREE YEAR TIME LIMIT

When the three year time limit was introduced, Representative Lawlor indicated that there existed a practical reason for imposing the time restriction. According to his 1997 testimony, Representative Lawlor argued that the three year time frame was necessary because, "[I]t's been difficult to obtain records of exactly what happened years and years ago...." It is important to note that this argument is no longer valid: (1) Court transcripts are not destroyed (they're kept for "life"); (2) The entire Clerk's file for

misdemeanors is retained for ten years and for felonies the file is retained for 20 years; (3) As of 1999, the State's Attorney's files for Class C and D felonies are retained for ten years after expiration of the appeal period, and Class A and B felony files are retained for 20 years after expiration of the appeal period; and (4) The Division of Public Defender Services retains its clients' misdemeanor and felony files for 20 years after the date of disposition or for the length of the sentence, whichever is longer.

3. THE THREE YEAR TIME RESTRICTION IS UNREASONABLE

In 1997, Representative Lawlor argued that the three year time restriction, "...essentially would close a wide loop hole available to convicted offenders in order to obtain a new trial." And, that such a time restriction is "reasonable...to discover a mistake was made and to return to court and ask for a new hearing..." It is worth noting that the absence of a time frame in the original statutory scheme should not be viewed as a "loop hole." The purpose of the immigration advisement statute is to protect non-citizens from entering pleas without being aware that such pleas may trigger severe consequences under our federal immigration laws. In this sense, the advisement adds an important layer of procedural protection to the constitutional requirement that all pleas must be "knowing and voluntary." The failure of the Court to adhere to state and federal constitutional and/or statutory procedural safeguards does not create a "loop hole," but rather puts the non-citizen in a position to make a legally sound claim for post-conviction relief.

Secondly, the time frame for withdrawing a plea needs to be extended to protect non-citizens who find they are facing harsh and unanticipated immigration consequences long after they entered guilty or nolo contendere pleas. Negative immigration consequences often don't surface until or unless a particular triggering event occurs. Events that might trigger immigration consequences include petitioning the government for a benefit (change in status); attempted re-entry after traveling outside of the United States; and changes in federal immigration laws.

The three year time limit is unreasonable because negative immigration consequences frequently don't exist or can't be otherwise discerned at the time the Court accepts a plea. Although the events that might trigger immigration consequences are not confined to any specific time frame, at least the proposed two year extension will provide a somewhat greater opportunity for relief.

4. THE INTERESTS OF JUSTICE WILL BE BETTER SERVED

This revision will serve the interests of justice by extending the availability of an important procedural protection. The proposed five year time frame offers a greater guarantee of relief for non-citizens if they ultimately suffer immigration consequences upon the failure of the Court to adhere to the advisement requirement pursuant to C.G.S. 54-1j.

CONCLUSION

House Bill 6579 is an important and necessary revision to the current immigration advisement statute that restricts the mandated withdrawal of pleas to a three year period. The proposed five year time limit will serve to protect the legal interests of non-citizens and will increase judicial economy. The Connecticut Criminal Defense Lawyers Association urges the Committee on Judiciary to vote in support of this bill.

Respectfully submitted,

ELISA L. VILLA
MEMBER-AT-LARGE, CCDLA
On Behalf of the Connecticut
Criminal Defense Lawyers
Association

