



EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

July 8, 2013

GOV. MSG. NO. 1385

The Honorable Donna Mercado Kim,
President and Members
of the Senate
Twenty-Seventh State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Joseph M. Souki,
Speaker and Members of
the House of Representatives
Twenty-Seventh State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kim, Speaker Souki, and Members of the Legislature:

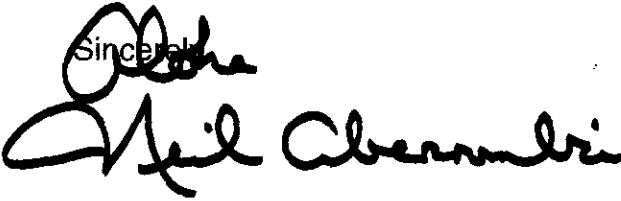
Re: House Bill No. 1059, H.D. 2, S.D. 2

House Bill No. 1059, H.D. 2, S.D. 2, entitled "A BILL FOR AN ACT RELATING TO COURT ADVISEMENT CONCERNING ALIEN STATUS" will become law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to require the court, under certain circumstances, to advise a criminal defendant of the effects of a guilty or no contest plea on their alien status.

Although the purpose of this bill is laudable, I have concerns that the advisement is prescriptively written in statute. Presiding judges should be allowed discretion as to the words they speak to their courtroom. I encourage the Legislature to further review these provisions and provide judges with more flexibility.

For the foregoing reasons, House Bill No. 1059, H.D. 2, S.D. 2 will become law as Act 279, Session Laws of Hawaii 2013, effective July 9, 2013, without my signature.

Sincerely,


NEIL ABERCROMBIE
Governor, State of Hawaii

Governor's signature JUL 9 2013

HOUSE OF REPRESENTATIVES
TWENTY-SEVENTH LEGISLATURE, 2013
STATE OF HAWAII

H.B. NO. 1059
H.D. 2
S.D. 2

A BILL FOR AN ACT

RELATING TO COURT ADVISEMENT CONCERNING ALIEN STATUS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 802E, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§802E- Court advisement concerning alien status
5 required at the commencement of arraignment and plea hearing.

6 At the commencement of the court session for arraignment and
7 plea hearings for an offense punishable as a crime under state
8 law, except offenses designated as infractions under state law,
9 the court shall administer the following advisement on the
10 record to all defendants present:

11 If you are not a citizen of the United States, whether or
12 not you have lawful immigration status, your case may have
13 severe and irreversible consequences, including immediate
14 detention, deportation, or exclusion from admission or
15 denial of naturalization to the United States. Your
16 attorney must advise you regarding the possible
17 consequences this case may have on your immigration status.



1 You are not required to disclose your immigration or
2 citizenship status to the court."

3 SECTION 2. Section 802E-2, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "~~{}~~§802E-2~~{}~~ Court advisement concerning alien status
6 required[-] prior to the commencement of trial, entry of a plea
7 of guilty or nolo contendere, or admission of guilt or
8 sufficient facts. Prior to ~~[acceptance]~~ the commencement of
9 trial, entry of a plea of guilty or nolo contendere, or
10 admission of guilt or sufficient facts to any offense punishable
11 as a crime under state law, except offenses designated as
12 infractions under state law, the court shall administer the
13 following advisement on the record to the defendant:

14 ~~[If you are not a citizen of the United States, you are~~
15 ~~hereby advised that conviction of the offense for which you~~
16 ~~have been charged may have the consequences of deportation,~~
17 ~~exclusion from admission to the United States, or denial of~~
18 ~~naturalization pursuant to the laws of the United States.]~~

19 If you are not a citizen of the United States, whether or
20 not you have lawful immigration status, you have the right
21 to receive advice from your attorney about the specific
22 impact that this case will have, if any, on your



1 immigration status. The entry of a guilty or nolo
2 contendere plea, admission of guilt or sufficient facts, or
3 conviction, deferred judgment, or deferred sentence may
4 have the consequences of your immediate detention,
5 deportation, exclusion from admission to the United States,
6 or denial of naturalization pursuant to the laws of the
7 United States. In some cases, detention and deportation
8 from the United States will be required. Your lawyer must
9 investigate and advise you about these issues prior to the
10 commencement of trial, entry of a guilty or nolo
11 contendere, or admission of guilt or sufficient facts to
12 any offense punishable as a crime under state law, other
13 than those offenses designated as infractions. You are not
14 required to disclose your immigration or citizenship status
15 to the court.

16 Upon request, the court shall allow the defendant
17 additional time to consider the appropriateness of the plea in
18 light of the advisement as described in this section."

19 SECTION 3. Section 802E-3, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "~~{}~~§802E-3~~{}~~ Failure to advise; vacation of judgment.

22 If the court fails to advise the defendant as required by



1 ~~[section]~~ sections 802E-2 and 802E- and the defendant shows
2 that conviction of the offense to which the defendant pleaded
3 guilty or nolo contendere may have the consequences for the
4 defendant of deportation, exclusion from admission to the United
5 States, or denial of naturalization pursuant to the laws of the
6 United States, on defendant's motion, the court shall vacate the
7 judgment and permit the defendant to withdraw the plea of guilty
8 or nolo contendere, and enter a plea of not guilty. Absent a
9 record that the court provided the advisement required by this
10 section, the defendant shall be presumed not to have received
11 the required advisement."

12 SECTION 4. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 5. This Act shall take effect on July 1, 2013.

APPROVED this day of , 2013

GOVERNOR OF THE STATE OF HAWAII

