



## AB 1343

CODIFYING CASE LAW TO ENSURE DUE PROCESS FOR IMMIGRANT DEFENDANTS, PENAL CODE §§ 1016.2 & 1016.3

### SUMMARY

Assembly Bill 1343 codified the duty established in the U.S. Supreme Court case *Padilla v. Kentucky*, 559 U.S. 356 (2010) and long established by California case law, to safeguard due process for immigrants charged in the criminal justice system. It consisted of two parts. New Penal Code 1016.2 was a legislative statement of values. New Penal Code 1016.3 spoke specifically to the duties of criminal defenders and prosecutors, mainly explaining already existing rules set out in case law.

We found that codifying these decisions in a statute has had a significant beneficial effect: it has garnered much more attention and support from both defense counsel and prosecutors than simply citing the case law. Section 1016.3 requires defense attorneys to provide affirmative, competent advice to noncitizen defendants about the immigration consequences and where appropriate to strive to defend against these consequences. Prosecutors must consider the disproportionate impacts that a criminal offense can have on an immigrant, as one factor in reaching a just solution..

The ILRC and its partners sponsored AB 1343. Assemblymember Tony Thurmond authored the bill and Governor Jerry Brown signed it into law in 2015.

### ORIGINAL LANGUAGE

The California Legislature publishes each version of a bill, showing the additions and deletions made to the text as the bill moves through committees and floor votes in the legislature. For advocates considering a similar bill, be sure to view the original legislative text of AB 1343 as introduced on February 27, 2015 here: [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160AB1343](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB1343).

### FINAL STATUTORY LANGUAGE

View the final statutory text of the law, California Penal Code §§ 1016.2 and 1016.3, as chaptered on October 9, 2015 here: [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160AB1343](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB1343).

### FACT SHEET

See [here](#) for the “one-pager” fact sheet used as a lobbying tool for AB 1343.

### SUPPORT LETTERS

See [here](#) for a sample support letter for AB 1343 to help you draft model support letters for other

organizations or individuals to easily fill out and submit.

## TALKING POINTS

Here are some talking points for AB 1343 to help you in drafting your own for your local context:

- AB 1343 is a straightforward solution to a problem that most people probably take for granted: it requires defense attorneys to provide accurate advice to immigrants who need to interact with the justice system.
- If we are to truly secure liberty and justice for all, we have to make sure that all people in America—immigrant or otherwise—are equal in front of the law. And that includes making sure that all people have access to fair, honest, competent legal representation when they need it.
- This bill would write into law a basic best practice that every attorney should take to heart—providing the best possible legal advice to clients. This is especially important for immigrants, who face detention, deportation, or ineligibility for citizenship if their attorneys don't consider the larger repercussions of their legal advice.

## MEDIA ARTICLES

The article linked below provides insight on how California is taking steps to improve the lives of its immigrant communities through inclusive legislation, including AB 1343:

[On Immigration Reform, California Issues a Bold Statement](#), Huffington Post, October 21, 2015.

## OTHER STATES' SIMILAR LAWS

(Still looking through the following state statutes to see if they also require DA to consider consequences: California, Connecticut, the District of Columbia, Florida, Georgia, Hawaii, Maryland, Massachusetts, Minnesota, Montana, New Mexico, North Carolina, Ohio, Oregon, Rhode Island, Texas, Washington, and Wisconsin) kb xxx

## STORY OF THE BILL - INTERVIEW/FAQ

Below is an interview with Angie Junck and Kathy Brady, the lead ILRC attorney on this bill and experts on several areas of immigration law, including immigration consequences of crime, immigration enforcement, and immigrant youth. This interview provides an overview of certain considerations for advocates considering similar bills in their state.

### ***What was the primary goal and motivation behind this bill?***

Initially we did not want to do this bill, because we reviewed it as repeating already-established case law. However, our ultimate goal was to obtain statewide resources for public defender offices to hire Padilla experts and we were told we needed to pass a law first. One may ask why we needed this bill if the United States Supreme Court and California appellate courts had already established precedent, but enacting this bill has been more impactful than the case law. It works as an educational tool that got many counties on board with funding local defender offices, and encouraged both defenders and prosecutors to take these duties more seriously.

### ***What research, if any, was necessary or helpful in drafting the bill?***

The research was simple since it was already established precedent. We partnered with the California Public Defenders Association ("CPDA") and worked with impacted constituents to determine what we needed to include.

### ***What was the process for writing the bill language?***

We worked closely with the CPDA on the language. First, we focused on the legislature's intent to codify that you must advise and defend your client against deportation, which was tricky because we had to consider how it would work in practice. Defenders pointed out that they did not want to be locked in to a requirement of defending against (as opposed to advising on) immigration consequences in every case, because in some cases the client would not have it as a priority, or the criminal case had such severe consequences that counsel should advise against it. So we worked closely with them to get, "xxxxx

We also needed to make it clear that this legislation helps keep families together and that anti-immigrant prosecution practices are actually violating the spirit of law and hurting communities. We wanted to codify and encourage growth of the legal precedent.

Dicta in *Padilla* asserts it is in the best interests of justice for the prosecution to consider immigration consequences. Legislative counsel pushed us to make that a mandate, so we included under § 1016.3(b) that the prosecution "shall consider the avoidance of adverse immigration consequences" as a factor in xxxplea negotiations. We wrote § 1016.3(a) to ensure harmonious application in consideration of other laws within this space.

Lastly, Section three of AB 1343 was added to provide a basis for seeking funds to reimburse defender offices for activities pertaining to the requirements under AB 1343, i.e., for getting crim/imm expertise, either by retaining in-house experts or contracting with outside experts. Usually the hardest bills to move are those with associated costs, but on its face this bill did not require additional spending. That was for a later ask.

### ***What was the dream bill and what concessions were made?***

We did not have to concede anything, we actually strengthened the precedent by expanding it and introducing stronger language.

### ***How did other organizations or individuals get involved and what were their roles?***

The CPDA helped in drafting and many others provided support throughout the process, including the American Civil Liberties Union of California; California Immigrant Policy Center; Coalition for Humane Immigrant Rights of Los Angeles; Dolores Street Community Services; Pangea Legal Services; and California Attorneys for Criminal Justice.

### ***Who were the likely and unlikely allies throughout the process?***

The District Attorneys were an unlikely ally since they did not oppose. There was an Assembly member who did not know much about the bill, so we did a one-on-one call to explain it and address any concerns, which is a rare opportunity.

### ***What challenges did you face in passing the bill?***

The process went so fast it was hard to know when things had changed. Our main challenges were internal negotiations with our partners because we had many people involved and had to constantly go back and forth. Otherwise, the bill sailed through with a unanimous vote.

### ***Do you have any tips on lobbying for this particular bill?***

It is important to work with the constituents that would be most affected in day-to-day practice. You need to have attorneys on board involved in drafting and educating. Ask around to get input and make sure to educate on the specifics. People understand deportation defense, but few people understood that defenders have an affirmative duty to advise on immigration consequences. This is part of providing effective counsel and many

counties regrettably have not had the resources to fulfill this Constitutional duty.

***How did you address misconceptions or opposition to the bill?***

The biggest questions we had to address were why this bill was necessary since there are some bills that build education but have little effect on the ground. Here, we were doing more. In addition to codifying case law (which had not yet been done), this bill also included prosecutor accountability. The inclusion that prosecutors “shall consider” immigration consequences, really checks prosecutors biased against immigrants.

***Once the bill became a law, how did you go about monitoring and implementation? Were there any implementation issues that arose and if so, how were they resolved?***

Once the 2017 budget passed with funding for defender training, there were more opportunities to educate defenders and we’ve been in contact with some of the largest counties in California. Many public defenders use it as a tool with county commissioners to change the landscape and commit resources at the county level.

Implementation with District Attorney Offices is hard because many have said they do not need help and created their own standards, only to place requirements on the defense that would impose additional hurdles. Some counties copied from others and then it spread like wildfire. The Attorney General’s office is developing guidelines that are consistent with the intent of this bill for District Attorneys.

One beneficial change, however, is that many prosecutor offices used to say they had a blanket policy of refusing to consider “immigration pleas.” Some even wrongly asserted that it would be a violation of Equal Protection to give any consideration to immigration consequences. This language has moved many offices. A prosecutor still can assert that “I considered immigration consequences, and decided not to alter the deal,” but there are real challenges now. Section 1016.3 states that prosecutors should consider these consequences in light of all of the pro-immigrant statements set out in 1016.2. If a prosecutor refuses to accept an immigration offer to plead to a slightly different offense, that has the same or greater criminal law exposure as the original charge, and is factually appropriate to the conduct, one can say, “You are supposed to consider the offer in light of the values set out at 1016.2. Since this is an appropriate charge with the same or greater penalty, what is your justification for turning it down?” This remains a struggle, but many offices have improved.

In addition, we were somewhat surprised by the extent to which defender offices take this statute as an important mandate, when they did not have the same reaction to the precedent decisions. This was well worth passing.

***What was the biggest lesson learned and what would you do differently next time?***

I would definitely pin people down early on to figure out the next steps regarding funding. In other words, now that we codified this duty, what steps would follow to ensure that defenders were resourced to adequately fulfill this duty. We understood that it would be a two-part process, meaning we needed to pass legislation codifying the duty first, and then we could ask for financial support for defenders to carry out the duty. As we discuss in the section on AB 3, however, giving state money to public defenders turned out to be impossible with the then-governor, and may or may not have been possible with the legislature. We will try again.