

MASSACHUSETTS RULES OF CRIMINAL PROCEDURE

Rule 12(c)(3)(A)(iii) and 12(d)(3)(A)(iii)

DRAFT Reporter's Notes--2019

In *Commonwealth v. Petit-Homme*, 482 Mass. 775 (2019) the SJC referred to the Committee for review and reconsideration the immigration warning judges are required to give as part of plea colloquies or admissions to sufficient facts by Mass. R. Crim. P. 12(c)(3)(A)(iii)(b) and 12(d)(3)(A)(iii)(b) (the “rule [b] warning”). This warning (which is identical in both sections of the rule) is one of two that judges must give concerning potential immigration consequences of a guilty plea or admission.

The other warning, prescribed by General Laws c. 278, § 29D, is set forth in Mass. R. Crim. P. 12(c)(3)(A)(iii)(a) and 12(d)(3)(A)(iii)(a) (the “rule (a) warning”). It provides a general advisory that persons who are not citizens of the United States may face consequences under federal law of deportation, exclusion from admission or denial of naturalization, by the court’s acceptance of their guilty plea, plea of nolo contendere or admission to sufficient facts.

In contrast to the general advisory in the rule (a) warning, the rule (b) warning provides a more specific advisory about the likelihood of the immigration consequences described in the rule (a) warning based on treatment under federal law of the offenses to which a defendant pleads guilty or makes an admission. Unlike the general advisory in the rule (a) warning, the accuracy of this warning depends on “a thorough, nuanced understanding of Federal immigration law,” as well as detailed information concerning “the defendant’s immigration history and status, criminal record, and the nature and circumstances of the pending charges.” *Petit-Homme*, 482 Mass. at 786.

Without this detailed understanding of Federal immigration law, and the defendant’s immigration and criminal history, this more specific warning may create a misimpression or misunderstanding among defendants, and when paired with the more general advisory creates a significant risk of confusion. For these reasons, the rule (b) warning was eliminated in this amendment. Eliminating this warning in no way reduces counsel’s obligation to assess the potential collateral consequences for a non-citizen defendant of a guilty plea, plea of nolo contendere or admission to sufficient facts. See *Padilla v. Kentucky*, 559 U.S. 356, 363-364 (2010); *Commonwealth v. DeJesus*, 468 Mass. 174, 182 (2014).