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No. 29 of 1998

**Fourth Session Fifth Parliament Republic of Trinidad
and Tobago**

HOUSE OF REPRESENTATIVES

BILL

**AN ACT to establish a system of plea discussions and
plea agreements and matters incidental thereto**

THE CRIMINAL PROCEDURE (PLEA DISCUSSION AND
PLEA AGREEMENT) (NO. 2) BILL, 1998

Explanatory Note

(These notes form no part of the Bill but are intended only to indicate its general purport)

The purpose of this Bill is to enable a prosecutor and a defendant (whether on his own or represented by an attorney) to engage in plea discussions aimed at arriving at a plea agreement in respect of a course of action to be taken in the prosecution of a summary or indictable offence.

Part I of the Bill contains the Interpretation Clause and Application Clause.

Part II of the Bill provides for the structure of plea discussions. The major clauses of the Bill are highlighted hereunder.

Clause 4 of the Bill would provide for plea discussions to be entered into by a prosecutor and the attorney for the accused person or where he is unrepresented, by the prosecutor and the accused person. By virtue of clause 4(2) a prosecutor would not be permitted to engage in any plea discussion unless he first obtains the permission of the Director of Public Prosecutions.

Under clause 5 criminal penalties would be incurred by various persons seeking to improperly induce an accused person to participate in a plea discussion.

Clause 8 of the Bill would require the prosecutor to obtain the views of the victim or a relative of the victim before concluding the plea discussion. Further, by clause 8(2), the victim would be told the substance of the agreement reached between the prosecutor and the other party unless there were compelling reasons to do otherwise.

Part III of the Bill addresses the issue of Plea Agreements. The main clauses are highlighted hereunder.

Clause 9 of the Bill would provide for the filing of all plea agreements with the Registrar or the Clerk of the Peace as the case may be.

Under clause 10 the Judge or Magistrate would be told the substance of the agreement and further, whether any previous agreement exists.

Under clause 10(2), the Judge or Magistrate, before accepting the agreement, would have to satisfy himself that—

- (a) there was no improper inducement;
- (b) the accused understands the nature of the agreement; and
- (c) the offence to which the agreement relates adequately reflects the gravity of the provable conduct of the accused.

In clause 11(1), the Judge or Magistrate would, before recording the terms of the agreement, allow the victim to express his views. As a result of such expression, the Judge or Magistrate would have the discretion to retire to Chambers to reconsider the plea agreement.

Clauses 13 and 14 would allow for an accused person who has entered into a plea agreement to withdraw from the agreement before sentence or appeal against sentence in certain circumstances only.

By virtue of clause 16, evidence of a plea agreement later withdrawn or of an offer to enter into a plea agreement would be inadmissible in any proceedings.

BILL

**AN ACT to establish a system of plea discussions and
plea agreements and matters incidental thereto**

[, 1998]

ENACTED by the Parliament of Trinidad and Tobago as Enactment
follows:—

PART I

PRELIMINARY

1. This Act may be cited as the Short title
(Plea Discussion and Plea Agreement) Bill, 1998.

2. In this Act—

“Court” means the High Court or the Magistrate’s Court;

“improper inducement” means—

- (i) an inducement by the prosecutor that is false or misleading and affects the genuineness or factual accuracy of the plea agreement entered into;
- (ii) the laying of a charge or the threat to lay a charge, not supported by facts or which cannot be proved, by the prosecutor;
- (iii) the laying of a charge or threat to lay a charge that is not usually laid with respect to an act of the type attributed to the accused person;
- (iv) a threat that, if the accused person does not plead guilty to the charge, the Court will impose a sentence more severe than that which is ordinarily imposed in similar cases;
- (v) an offer, threat or promise which cannot be fulfilled;
- (vi) any material misrepresentation;
- (vii) an attempt to persuade the accused person to plead guilty notwithstanding his continued denial of guilt,

but does not otherwise include encouraging the accused person to enter into a plea agreement;

“plea agreement” or “agreement” means an agreement entered into—

- (i) between the accused person and the prosecutor; or
- (ii) between attorney for the accused person and the prosecutor,

whereby the accused person agrees to plead guilty and the prosecutor agrees to take a particular course of action;

“plea discussion” or “discussion” means a discussion held—

- (i) between an accused person and a prosecutor; or
- (ii) between an attorney for an accused person and a prosecutor,

before the arraignment of the accused person, or before taking his plea, with the view towards arriving at an agreement;

“particular course of action” includes the following:

- (i) a recommendation to the Court to dismiss other charges;
- (ii) a recommendation to the Court as to a particular sentence;
- (iii) an agreement not to oppose a request by the accused person, or his attorney, for a particular sentence;
- (iv) an agreement that a specific sentence is appropriate for the disposition of the case;

“prosecutor” means the Director of Public Prosecutions or an attorney to whom he grants a fiat, or who is otherwise authorised by the Director of Public Prosecutions to prosecute under any law to which this Act applies;

“relative” means the spouse (including a common law spouse), parent or step-parent, child or step-child of the victim.

Application of Act

3. (1) This Act applies to a plea discussion and a plea agreement in respect of an indictable or summary offence.

(2) This Act does not affect the right of an accused person to plead guilty without entering into a plea discussion.

(3) Where this Act is at variance or in conflict with any other law the provisions of this Act shall prevail.

PART II

PLEA DISCUSSIONS

Plea discussions

4. (1) A prosecutor and an accused person or where the accused person is represented by an attorney, a prosecutor and the attorney for the accused person, may engage in plea discussions.

(2) Where a prosecutor is granted a fiat or is otherwise authorised by the Director of Public Prosecutions to prosecute under any law to which this Act applies, no plea discussion shall commence between the prosecutor and the accused person or his attorney, as the case may be, without the written permission of the Director of Public Prosecutions.

Improper
inducement

5. (1) A prosecutor shall not offer any improper inducement to an accused person to participate in a plea discussion.

(2) A prosecutor who contravenes subsection (1) is liable on summary conviction to a fine of twenty-five thousand dollars and to imprisonment for five years.

(3) A police officer or the attorney for an accused person is liable to a fine of twenty thousand dollars and to imprisonment for five years where he—

(a) conspires with the prosecutor in the commission of an offence under subsection (1); or

(b) attempts, incites, aids, abets, counsels or procures, the commission of such an offence under subsection (1).

6. (1) Where an accused person has retained an attorney, a prosecutor shall not engage in a plea discussion directly with the accused person in the absence of his attorney. Representation by attorney

(2) A prosecutor shall inform an accused person of his right to representation, by an attorney, in the plea discussion.

(3) An accused person who cannot afford to retain an attorney may apply for legal aid under the Legal Aid and Advice Act. Chap. 7:07

(4) Where an accused person is not eligible for legal aid, the prosecutor shall not have any discussion directly with the accused, unless the accused person informs the prosecutor, by way of the form set out as Form 1 in the Schedule that he does not wish to be represented by an attorney. Schedule Form I

(5) Notwithstanding subsection (4), the Judge or Magistrate, in the exercise of his jurisdiction, may appoint an attorney for the accused person.

7. (1) A prosecutor shall not suggest, conclude or participate in any plea discussion that requires the accused person to plead guilty to an offence that— Coercion of accused

(a) is not disclosed by the evidence;

(b) inadequately reflects the gravity of the provable conduct of the accused person unless, in exceptional circumstances, the

charge is justifiable in terms of the benefits that will accrue to the administration of justice, the protection of society, or the protection of the accused;

- (c) requires the prosecutor to withhold or distort evidence; or
- (d) contemplates a disposition that departs significantly from that which, in the absence of a plea agreement, would result in the accused pleading guilty to the same offence, unless, in exceptional circumstances, it is justifiable in terms of the benefits that will accrue to the administration of justice, the protection of society, or the protection of the accused.

Victim to be consulted

8. (1) A prosecutor shall, unless the circumstances make it impracticable to do so, obtain the views of the victim or a relative of the victim before concluding plea discussions.

(2) A prosecutor who arrives at a plea agreement with the accused person shall ensure that victims are told the substance of, and reasons for, the agreement, unless compelling reasons, such as the likelihood of serious harm to the accused or to another person, require otherwise.

PART III

PLEA AGREEMENTS

Plea agreement

Form 2

9. (1) A plea agreement which has been concluded between the prosecutor and the attorney for the accused person shall be set out as in Form 2 of the Schedule and where such agreement is concluded, the prosecutor shall file the agreement with the Registrar or the Clerk of the Peace, as the case may be.

(2) A plea agreement which has been concluded between the prosecutor and an unrepresented accused

person shall be set out as in Form 3 of the Schedule ^{Form 3} and where such agreement is concluded it shall be signed by both parties in the presence of a Justice of the Peace and filed with the Registrar or Clerk of the Peace, as the case may be.

(3) The Registrar or the Clerk of the Peace shall, upon receipt and filing of the agreement, set the matter down for hearing before a Judge or Magistrate sitting in Chambers.

10. (1) The prosecutor shall disclose to the Court, in ^{Hearing in Chambers} Chambers—

- (a) the substance of, and reasons for, the agreement; and
- (b) whether any previous agreement has been disclosed to another Judge or Magistrate in connection with the same matter and, if so, the substance of that agreement.

(2) The Judge or Magistrate shall, before accepting a plea agreement determine to his satisfaction that—

- (a) no improper inducement was made to the accused person to enter into the agreement;
- (b) the accused person understands the nature, substance and consequences of the agreement;
- (c) the offence to which the agreement relates adequately reflects the gravity of the provable conduct of the accused.

PART IV

GENERAL

11. (1) Where the Judge or Magistrate adjourns a ^{Views of victim in open court} matter to open court he shall, where possible, seek the views of the victim or a relative of the victim, before

recording the terms of the agreement and passing sentence.

(2) Where the Judge or Magistrate hears the victim or the relative and consequently is of the view that the agreement should be reconsidered, he may retire to Chambers to reconsider the plea agreement.

Offer of accused to
plead guilty

12. (1) Where an accused person, charged for an offence offers, at the commencement of the trial or at any time thereafter before its conclusion, to plead guilty to an offence if other charges against him are dismissed, the Judge or Magistrate, shall inquire of the prosecutor whether he agrees to accept the offer of the accused person.

(2) Where the prosecutor agrees to accept the offer of the accused person the matter shall be disposed of accordingly.

(3) Where the prosecutor refuses to accept the offer of the accused person, the trial shall continue.

Withdrawal of
agreement

13. An accused person who enters into a plea agreement shall be entitled to withdraw from that agreement before sentence, or to appeal against a conviction based on the agreement if—

- (a) it was entered into as a result of an improper inducement;
- (b) it was entered into as a result of a significant misrepresentation as to the substance or consequences of a plea agreement; or
- (c) the prosecutor has breached the terms of the plea agreement.

Appeal against
sentence

14. Where an accused person pleads guilty to an offence and, upon his conviction, receives a sentence that accords with, or is within the range anticipated by,

the plea agreement, the prosecutor shall not be permitted to appeal against the sentence imposed by the Judge or Magistrate unless it is shown that—

- (a) the prosecutor, in the course of a plea discussion, was wilfully misled by the accused person in some material respect; or
- (b) the Court, in passing sentence, was wilfully misled in some material respect.

15. Where an accused person pleads guilty to an offence in accordance with the plea agreement, any proceedings taken subsequently against the accused person in contravention of that agreement shall be prohibited, unless the prosecutor—

- (a) was, in the course of plea discussions, wilfully misled by the accused person or by his attorney in some material respect; or
- (b) was induced to conclude the plea agreement by conduct amounting to an obstruction of justice.

16. Evidence of a plea agreement later withdrawn or of an offer to enter into a plea agreement, or of a statement made in connection with any such agreement or offer, is inadmissible in any proceedings.

17. The Legal Aid and Advice Act is amended by inserting under item 1 in Part I of the First Schedule, the following paragraph:

- “(c) plea discussions and plea agreements under the Criminal Procedure (Plea Discussion and Plea Agreement) Act, 1998.”.

SCHEDULE

FORM 1

(This Form applies where the accused/defendant does not wish to be represented by an attorney)

REPUBLIC OF TRINIDAD AND TOBAGO

DECLARATION BY ACCUSED/DEFENDANT OF DESIRE TO REPRESENT SELF IN THE HIGH COURT/MAGISTRATE'S COURT

No.

A.B. — The State/*Complainant*

v

A.B. — The Accused/*Defendant*

WHEREAS the accused/defendant was on the day of 19..... charged with the following offence(s):

- (a)
- (b)
- (c)
- (d)

And whereas the accused/defendant having been informed by the prosecutor as to his right to representation by an attorney, informed the prosecutor of his desire to represent himself.

Dated this day of, 19.....

(Signed)
Prosecutor

(Signed)
Accused/Defendant

CERTIFICATION OF JUSTICE OF THE PEACE

I, Justice of the Peace for the County of, hereby certify that the above declaration was signed by the prosecutor,, and the accused/
(name of prosecutor)

defendant, in my presence on the day of
(name of accused/defendant)

....., 19.....

(Signed)
Justice of the Peace

SCHEDULE—CONTINUED

FORM 2

(This Form applies where the accused/defendant is represented by an attorney)

REPUBLIC OF TRINIDAD AND TOBAGO

PLEA AGREEMENT

IN THE HIGH COURT/MAGISTRATE'S COURT

No.

A.B.—The State/*Complainant*

v

C.D.—Accused/*Defendant*

WHEREAS the accused/defendant was on the day of 19..... charged with the following offence(s):

(a)

(b)

(c)

(d)

And whereas a plea agreement was on the day of, 19..... concluded between the prosecutor and the attorney for the accused/defendant:

And whereas it was agreed that the accused/defendant shall plead guilty to—

(a)

(b)

(c)

(d)

(e)

and in consideration that the prosecutor shall take a certain course of action mentioned hereunder:

And whereas it was agreed that the prosecutor shall take the following course of action:

**(a)* a recommendation to the Court to dismiss other charges; []

**(b)* a recommendation to the Court as to a particular sentence; []

**(c)* an agreement not to oppose a request by the attorney for the accused for a particular sentence; []

**(d)* an agreement that a specific sentence is appropriate for the disposition of the case. []

SCHEDULE—CONTINUED

FORM 2—Continued

Dated this day of, 19.....

(Signed)
Prosecutor

(Signed)
Attorney for Accused/Defendant

*[/] particular course of action to be taken.

FORM 3

(This Form applies where the accused/defendant is not represented by an attorney)

REPUBLIC OF TRINIDAD AND TOBAGO

PLEA AGREEMENT

IN THE HIGH COURT/MAGISTRATE'S COURT

No.

A.B. — The State/*Complainant*

v

C.D. — Accused/*Defendant*

WHEREAS the accused/defendant was on the day of 19..... charged with the following offence(s):

- (a)
- (b)
- (c)
- (d)

And whereas the prosecutor informed the accused/defendant that he should be represented by an attorney:

And whereas the accused/defendant informed the prosecutor that he did not wish to be represented by an attorney:

And whereas a plea agreement was on the day of 19..... concluded between the prosecutor and the accused/defendant:

And whereas it was agreed that the accused/defendant shall plead guilty to:

- (a)
- (b)
- (c)
- (d)
- (e)
- (f)

in consideration that the prosecutor would take a certain course as mentioned hereunder:

And whereas it was agreed that as a result of the accused/defendant pleading guilty to the said offence(s), the prosecutor shall take the following course of action:

- * (a) a recommendation to the Court to dismiss other charges; []
- * (b) a recommendation to the Court as to a particular sentence; []
- * (c) an agreement not to oppose a request by the accused for a particular sentence; []
- * (d) an agreement that a specific sentence is appropriate for the disposition of the case. []

Dated this day of, 19.....

(Signed)
Prosecutor

(Signed)
Accused/Defendant

*[] particular course of action to be taken.

CERTIFICATION OF JUSTICE OF THE PEACE

I, Justice of the Peace for the County of hereby certify that the above plea agreement was signed by the prosecutor,, and
(name of prosecutor)

the attorney for accused/defendant,, in my
(name of accused/defendant)

presence on the day of, 19.....

(Signed)
Justice of the Peace

Passed in the House of Representatives this
day of, 1998.

Clerk of the House

I confirm the above.

Speaker

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Passed in the Senate this day of , 1998.

Clerk of the Senate

I confirm the above.

President of the Senate

No. 29 of 1998

FOURTH SESSION
FIFTH PARLIAMENT

REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

AN ACT to establish a system of plea discussions and plea agreements and matters incidental thereto.

Received and read the

First time.....

Second time.....

Third time.....
