

AS AMENDED IN THE H.O.R.

No. 13 of 2017

Second Session Eleventh Parliament Republic of
Trinidad and Tobago

HOUSE OF REPRESENTATIVES

BILL

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

THE CRIMINAL PROCEDURE (PLEA DISCUSSION AND
PLEA AGREEMENT) BILL, 2017

Explanatory Notes

(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 an accused person, which includes a person suspected of committing a criminal offence and a defendant in proceedings before the court for criminal proceedings, (whether on his own or represented by an Attorney-at-law) to engage in plea discussions aimed at arriving at a plea agreement. Plea discussions may be initiated by either the accused person or prosecutor in both summary and indictable offences. Under a plea agreement, the accused agrees to plead guilty to a specified offence or undertakes to perform any other obligations contained in the plea agreement in exchange for the prosecutor's undertaking to take a particular course of action. The Bill contains five Parts.

Part I of the Bill contains preliminary provisions.

Clause 1 contains the short title and commencement of the Act for which this is the Bill. The clause provides that the Act would come into force by Proclamation by the President.

Clause 2 would provide for the interpretation of certain terms used in the Bill, including "improper inducement", "particular course of action", "victim", "relative" and "impact statement". It should be noted that the definition of "victim" is expansive, in that the term covers not only persons against whom an offence is committed, but also persons who suffer physical, mental or emotional harm or economic loss as a direct result of the commission of the offence. The term also has been defined to include a business that suffers economic loss as a direct result of the commission of the offence.

Clause 3 would provide for the application of the Act to both indictable and summary offences whether committed before or after the Act comes into force.

Clause 4 would seek to more fully define what a plea agreement is in substance.

Part II of the Bill provides for the structure of plea discussions.

Clause 5 of the Bill would provide for the stages at which plea discussions may be held, which can be at any time before conviction.

Clause 6 would provide for the written permission of the Director of Public Prosecutions to be obtained prior to a prosecutor entering into a plea discussion with an accused or the accused's Attorney-at-law.

Clause 7 would prohibit the use of improper inducements to encourage an accused to participate in a plea discussion.

Clause 8 would prohibit a prosecutor from participating in plea discussions in certain circumstances, *inter alia*, a plea discussion that requires an accused to plead guilty to an offence that is not disclosed by the evidence or inadequately reflects the gravity of the provable conduct of the accused.

Clause 9 would prohibit a prosecutor from engaging in plea discussions with an accused in the absence of his Attorney-at-law, where that accused has retained counsel to represent him.

Clause 10 would prohibit a prosecutor from initiating plea discussions with an unrepresented accused person, unless the Prosecutor informs the accused person of certain rights, *inter alia*, his right to be represented by an Attorney-at-law.

Clause 11 would provide for the duty of the Prosecutor to provide the accused with a written summary of the evidence against the accused in circumstances where plea discussions are initiated before charges are laid, as well as in circumstances where plea discussions are initiated after charges are laid.

Clause 12 would provide for the procedure to be followed by a Judge or Magistrate upon the first appearance of the accused in Court.

Part III of the Bill would provide for victim impact statements.

Clause 13 of the Bill would require the prosecutor to inform the victim of his right to provide the prosecutor with a victim impact statement and require that certain content not be included in the victim impact statement.

Clause 14 would provide for restrictions on the content of a victim impact statement.

Clause 15 would provide for relatives of the victim to provide an impact statement in the event that the victim has died, is ill or is otherwise incapacitated, or cannot be found.

Clause 16 would provide for the procedure to be followed where an impact statement is being provided by a victim under the age of fourteen years.

Clause 17 of the Bill would provide for a duly authorized representative of a business that has been the victim of a crime to provide the prosecutor with an impact statement on behalf of that business.

Clause 18 would provide for certain duties of the prosecutor in respect of the victim impact statement and the victim. This clause would also require the prosecutor to serve the impact statement on the accused.

Part IV of the Bill would provide for the procedure to be followed in respect of plea agreements and plea agreement hearings.

Clause 19 would provide for a situation where a plea agreement is concluded between a prosecutor and an Attorney-at-law for the accused, and would provide a list of documents which shall accompany the plea agreement and which must be filed with the Registrar or Clerk of the Peace, as the case may be.

Clause 20 would provide for a situation where a plea agreement is concluded between a prosecutor and an unrepresented accused, and would provide a list of documents which shall accompany the plea agreement and which must be filed with the Registrar or Clerk of the Peace, as the case may be.

Clause 21 would provide for the procedure to be followed upon the filing of a plea agreement. The clause would, *inter alia*, require the Registrar or Clerk of the Peace to list the matter for a plea agreement hearing within twenty-eight days of the filing of the plea agreement.

Clause 22 would provides *inter alia* that where a plea agreement is filed before the commencement or during the conduct of committal proceedings but before an accused is committed to stand trial in the High Court, the Magistrate shall, *inter alia*, cease conduct of the committal proceedings and order that the plea agreement hearing be transferred to the High Court for determination.

Clause 23 would provide for the Director of Public Prosecutions to prefer and file an indictment within a specified time frame, in circumstances where a plea agreement is filed before the commencement or conclusion of committal proceedings.

Clause 24 would provide for the procedure to be followed at a plea agreement hearing. The prosecutor is required to disclose

certain information to the Court and the Court is required to make certain enquiries of the accused at the plea agreement hearing.

Clause 25 would provide that a plea agreement is not binding on the Court.

Clause 26 provides that where a Judge or Magistrate accepts a plea agreement, the accused shall be requested to plead to the charge.

Clause 27 provides for the procedure to be followed where an accused person withdraws from a plea agreement.

Part V would provide for the general provisions of the Bill.

Clause 28 would provide that an accused person may appeal to the Court of Appeal where a Court has rejected a plea agreement.

Clause 29 would provide that the Director of Public Prosecutions may appeal to the Court of Appeal where a Court has rejected a plea agreement.

Clause 30 provides the grounds upon which an accused may withdraw from a plea agreement before sentence or may appeal against conviction based on the plea agreement.

Clause 31 provides the grounds upon which the Director of Public Prosecutions may seek the leave of the Court of Appeal to have a plea agreement, a conviction or a sentence set aside.

Clause 32 provides for the extension of time for filing a notice of appeal.

Clause 33 provides that the evidence of certain matters, *inter alia*, a plea agreement, which is later withdrawn, shall not be admissible against the accused who entered into a plea agreement or was a party to a plea discussion.

Clause 34 would empower a Court to order that the records of plea discussions or a plea agreement be sealed, in the interest of the effective administration of justice.

Clause 35 would provide for the repeal of the Criminal Procedure (Plea Discussion and Plea Agreement) Act, Chap. 13:07.

Clause 36 would save any actions, proceedings and decisions in respect of plea discussions or plea agreements commenced or taken under the former Act, upon the commencement of this Act.

The Schedule would set out the forms referred to in the Act.

THE CRIMINAL PROCEDURE (PLEA DISCUSSION AND
PLEA AGREEMENT) BILL, 2017

Arrangement of Clauses

PART I

PRELIMINARY

Clause

1. Short title and commencement
2. Interpretation
3. Application of Act
4. Plea agreement

PART II

PLEA DISCUSSIONS

5. Plea discussions may be entered into at anytime before conviction
6. Permission of Director of Public Prosecutions required
7. Improper inducements prohibited
8. Prohibition against plea discussions in certain circumstances
9. Plea discussion with represented accused person
10. Procedure for plea discussions with an unrepresented persons
11. Prosecutor's duty to disclose evidence
12. Procedure at the first appearance of an accused person

PART III

VICTIM IMPACT STATEMENT

13. Victim's right to make a victim impact statement
14. Restriction on the content of a victim impact statement
15. Victim impact statement may be made by a relative of the victim
16. Victims under fourteen years of age
17. Victim impact statement by a business

18. Duties of the prosecutor in respect of victim impact statements

PART IV

PLEA AGREEMENTS AND PLEA AGREEMENT HEARINGS

19. Form and filing of plea agreement with a represented person
20. Form and filing of plea agreement with an unrepresented person
21. Listing matters for plea agreement hearing
22. Plea agreements at committal proceedings
23. Director of Public Prosecutions to prefer indictments
24. Procedure at plea agreement hearing
25. Plea agreement not binding on the Court
26. Procedure when a plea agreement is accepted
27. Accused's withdrawal from plea agreement

PART V

GENERAL

28. Accused person's right of appeal against rejection of plea agreement
29. Director of Public Prosecution's right of appeal against rejection of plea agreement
30. Grounds for withdrawal from plea agreement and appeal by accused person
31. Application of prosecutor to set aside the plea agreement, conviction or sentence
32. Extension of time for filing notice of appeal
33. Plea agreement inadmissible in criminal or civil court
34. Sealing of records
35. Minister may amend Schedule
36. Regulations
37. Repeal of Chap. 13:07
38. Transitional and Savings

SCHEDULE

BILL

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

[, 2017]

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

PART I
PRELIMINARY

Short title and
Commencement

1. (1) This Act may be cited as the Criminal Procedure (Plea Discussion and Plea Agreement) Act, 2017.

(2) This Act shall come into force on a date to be fixed by the President by Proclamation.

Interpretation

2. In this Act—

“accused person” means—

(a) a person against whom a complaint is made or an information laid; or

(b) a person against whom an indictment is preferred;

“business” includes a profession, occupation or undertaking, outside of the public sector, whether carried on for profit or otherwise;

“committal proceedings” means proceedings held under the Indictable Offences (Preliminary Enquiry) Act;

Chap. 12:01

“Court” means the High Court or the Magistrate’s Court, as the context may require;

“Court Interpreter” means any person who holds a valid licence or who is appointed under the Interpreters Act;

Chap. 6:54

“Director of Public Prosecutions” means the public officer appointed under section 90 of the Constitution;

“former Act” means the Criminal Procedure (Plea Discussion and Plea Agreement) Act;

Chap. 13:07

“improper inducement”, includes—

- (a) the laying of a charge not believed to be supported by provable facts;
- (b) the laying of a charge that is not usually laid with respect to an act or omission of the type attributed to the accused person or suspect;
- (c) the coercion of an accused person or suspect to enter into a plea discussion including a threat—
 - (i) to lay a charge of the type described in paragraph (a) or (b); or
 - (ii) that any plea of not guilty entered into by the accused person will result, upon the accused person’s conviction, in the prosecutor asking for a sentence more severe than the sentence that is usually imposed upon an accused person who is convicted of a similar offence;
- (d) the misrepresentation of a material fact by the prosecutor either before a plea discussion is entered into or during the course of the discussion;
- (e) an offer or promise, the fulfillment of which is not the function of the office of the Director of Public Prosecutions; or
- (f) an attempt to persuade the accused person or suspect to plead guilty notwithstanding the accused person’s or suspect’s continued denial of guilt;

“Minister” means the Attorney General;

“offence” means a criminal offence;

“particular course of action” means a course of action referred to in section 4(1)(b), that a prosecutor may take under a plea agreement;

“plea agreement” means an agreement made between the prosecutor and the accused person or suspect under section 4 of this Act;

“plea agreement hearing” means a hearing in respect of a plea agreement held before a Court;

“plea discussion” means a discussion held between a prosecutor and an accused person or a suspect for the purpose of arriving at a plea agreement;

“prosecutor” means the Director of Public Prosecutions or an Attorney-at-law authorized, in writing, by the Director of Public Prosecutions to engage in a plea discussion or conclude a plea agreement;

“relative” means—

(a) in relation to the victim—

- (i) his parent, step-parent or guardian;
- (ii) his spouse, cohabitant or fiancé;
- (iii) his child, step-child or other dependent;
- (iv) his brother, sister, step-brother or step-sister;
- (v) his grandparent; or

(vi) any other person who the Court determines to be of sufficient proximate relationship (whether by blood or otherwise) to be considered a member of the victim's immediate family; or

(b) any other person responsible for the victim's care and support;

"suspect" means a person whom a police officer, with reasonable cause, suspects has committed an offence, but who is not charged;

"victim" means—

(a) a person against whom an offence is committed;

(b) a person who suffers physical, mental or emotional harm or economic loss as a direct result of the commission of an offence against another person; or

(c) a business that suffers economic loss as a direct result of the commission of an offence; and

"victim impact statement" means a written statement made by a victim which is provided to a prosecutor under Part III.

3. (1) This Act applies to both summary and Application of Act indictable offences.

- (2) This Act does not affect—
- (a) the right of an accused person to plead guilty without entering into a plea agreement; or
 - (b) the right of an accused person to seek a sentence indication from the Court of the maximum sentence that the Court may impose if the accused pleads guilty to an offence.

Plea agreement

4. For the purpose of this Act, a plea agreement is an agreement made between the prosecutor and the accused person or suspect in which—

- (a) the accused person or suspect agrees—
 - (i) to plead guilty to an offence which is disclosed on the facts and on which the charge is based; and
 - (ii) to fulfill any other obligations specified in the plea agreement; and
- (b) the prosecutor agrees to take a particular course of action including—
 - (i) the withdrawal or discontinuation of the original charge or charges against the accused person or a co-accused;
 - (ii) the reduction of the charge against the accused person or a co-accused to a lesser offence than that charged;
 - (iii) an undertaking not to institute charges against family members or friends of the accused person or suspect;
 - (iv) an undertaking to recommend summary trial rather than trial by indictment;

- (v) a recommendation to the Court that a particular sentence or sentencing range is appropriate;
- (vi) an undertaking not to oppose a request by an accused person or his Attorney-at-law that a particular sentence be imposed;
- (vii) an undertaking that a conviction pursuant to a plea agreement will not be used as evidence of bad character at the trial for a specified offence or for any other offence;
- (viii) a promise to proceed by complaint rather than by information; and
- (ix) a recommendation to the Court that the record of the plea discussion and the plea agreement be sealed.

PART II

PLEA DISCUSSIONS

5. A plea discussion may be held and a plea agreement concluded at any time before conviction, including—

Plea discussions may be entered into at anytime before conviction

- (a) before charges are instituted;
- (b) during committal proceedings;
- (c) before arraignment;
- (d) at any time after committal; or
- (e) at any time before or during trial for a summary offence or indictable offence.

6. A prosecutor shall not enter into a plea discussion or conclude a plea agreement unless the prosecutor first obtains the written permission of the Director of Public Prosecutions.

Permission of Director of Public Prosecutions required

Improper inducements prohibited

7. No improper inducement shall be used to encourage an accused person or suspect to participate in a plea discussion or conclude a plea agreement.

Prohibition against plea discussions in certain circumstances

8. A prosecutor shall not initiate or participate in a plea discussion or conclude a plea agreement that requires the accused person or suspect to plead guilty to an offence that—

- (a) is not disclosed by the evidence;
- (b) does not adequately reflect the gravity of the provable conduct of the accused person or suspect unless, in the discretion of the Director of Public Prosecutions, the charge is justifiable having regard to—
 - (i) the benefits that will accrue to the administration of justice; or
 - (ii) the protection of society from the prosecution of the accused person or suspect; or
- (c) requires the prosecutor to withhold or distort evidence.

Plea discussion with represented accused person

9. Where an accused person or suspect is represented by an Attorney-at-law, a prosecutor shall not engage in a plea discussion with the accused person or suspect in the absence of his Attorney-at-law.

Procedure for plea discussions with unrepresented persons

10. (1) A prosecutor shall not initiate a plea discussion with an accused person who is not represented by an Attorney-at-law unless—

- (a) the prosecutor has informed the accused person—
 - (i) of his right to be represented by an Attorney-at-law during plea discussions; and

(ii) that he may elect to have a third party of his choice present during the plea discussions;

(b) the accused person has informed the prosecutor, in the form set out in Form 1 in the Schedule, that having been advised by the prosecutor of the matters referred to in paragraph (a)—

(i) he desires to represent himself; and

(ii) he agrees to the plea discussions being recorded; and

(c) the Court has been informed of the matters set out in paragraphs (a) and (b) and approves of the initiation of a plea discussion.

(2) A prosecutor shall not initiate a plea discussion with a suspect who is not represented by an Attorney-at-law unless—

(a) the prosecutor has informed the suspect—

(i) of his right to be represented by an Attorney-at-law during plea discussions; and

(ii) that he may elect to have a third party of his choice present during the plea discussions; and

(b) the suspect has informed the prosecutor, in the form set out in Form 1A in the Schedule, that having been advised by the prosecutor of the matters referred to in paragraph (a)—

(i) he desires to represent himself; and

(ii) he agrees to the plea discussions being recorded.

Prosecutor's duty
to disclose evidence

11. (1) If plea discussions are initiated before charges are laid, the prosecutor shall inform the suspect of the allegations against him and provide the suspect or his Attorney-at-law with a written summary of the evidence against him.

(2) If a plea discussion is initiated after charges are laid but before the prosecutor tenders evidence implicating the accused person, the prosecutor shall provide the accused person or his Attorney-at-law with a written summary of the evidence against him.

(3) Nothing contained in subsection (1) or (2) is to be construed as requiring the prosecutor to disclose—

- (a) all of the evidence supporting his case; or
- (b) the names of witnesses or any other information by which such witnesses may be identified,

if the prosecutor is reasonably of the view that such information should not be disclosed at that stage and the suspect or accused person is not thereby misled or prejudiced.

Procedure at the
first appearance
of an accused
person

12. Upon the first appearance of an accused person before a Court, whether the accused is represented by an Attorney-at-law or not, the Court shall advise the accused person—

- (a) of his right to enter into a plea discussion with the prosecutor and to be represented by an Attorney-at-law during the plea discussion;
- (b) if the accused person cannot afford to retain an Attorney-at-law of his right to apply for legal aid under the Legal Aid and Advice Act for the purpose of entering into a plea discussion; or

- (c) of his right to enter into a plea discussion with the prosecutor under section 10(1) if he does not wish to be represented by an Attorney-at-law.

PART III

VICTIM IMPACT STATEMENT

13. (1) Every victim has the right to provide a victim impact statement explaining the physical or emotional harm, financial loss or other impact that the offence has had on the victim. Victim's right to make a victim impact statement

(2) Before a plea discussion is concluded, the prosecutor shall inform the victim of his right to provide a victim impact statement and of the restrictions specified in section 14 with respect to the content of the victim impact statement.

(3) A prosecutor who concludes a plea agreement with an accused person or a suspect shall ensure that the victim is informed of—

- (a) the substance and reasons for the plea agreement unless compelling reasons, including the likelihood of serious harm to the accused person, suspect or another person, require otherwise;
- (b) the date of the plea agreement hearing and the victim's right to attend all stages of the hearing and to be heard at the hearing; and
- (c) the victim's right to read his victim impact statement in Court or to have his victim impact statement read by the prosecutor or an officer of the Court if the victim does not wish to read the victim impact statement himself.

(4) If a victim elects not to give a victim impact statement, the Court, at the plea agreement hearing, shall not draw any inference that the offence did not result in harm to the victim.

Restriction on the content of a victim impact statement

14. A victim impact statement shall not include—
- (a) a restatement of the facts of the offence;
 - (b) criticisms about the accused person; or
 - (c) the victim's opinion about the type or severity of sentence to be imposed.

Victim impact statement may be made by a relative of the victim

15. (1) A relative of the victim may provide a victim impact statement on behalf of the victim at any time before a Court imposes sentence if the victim—

- (a) has died;
- (b) is ill or otherwise incapacitated; or
- (c) cannot be found.

- (2) The prosecutor shall—

- (a) advise the relatives of the victim that they are entitled to make a victim impact statement of the effect of the crime on the victim; and
- (b) communicate with the relatives of the victim in respect of the matters set out in sections 13 and 14.

Victims under fourteen years of age

16. Where the victim is a child—
- (a) under the age of fourteen years, a parent or guardian or, where the parents or guardians cannot be located, a person who has custody of the victim or who is responsible for the victim's care and support may make a victim impact statement on behalf of the victim; or
 - (b) has attained the age of fourteen years, the victim and one of his parents or guardians or, where the parent or guardian cannot be located, a person who has custody of the victim or who is responsible for the victim's care and support may make a victim impact statement on behalf of the victim.

17. If the victim is a business, a duly authorized representative of the business may provide a victim impact statement in the form set out in Form 2 of the Schedule.

Victim impact statement by a business

Schedule

18. (1) The prosecutor shall ensure that a victim impact statement complies with the requirements of section 14.

Duties of the prosecutor in respect of victim impact statements

(2) If a victim impact statement contains material that is not permitted under section 14, the prosecutor shall redact that material from the victim impact statement before it is filed with the Court.

(3) A victim impact statement shall be filed with the Court at the time of the filing of the plea agreement.

(4) After receiving the victim impact statement, the prosecutor shall serve the victim impact statement on the accused person or his Attorney-at-law as soon as it is reasonably practicable to do so.

PART IV

PLEA AGREEMENTS AND PLEA AGREEMENT HEARINGS

19. (1) A plea agreement concluded between a prosecutor and the Attorney-at-law for—

Form and filing of plea agreement with a represented person

- (a) an accused person; or
- (b) a suspect,

shall be in the form set out in Form 3 of the Schedule.

(2) Where an accused person is before a Magistrate, the plea agreement shall be filed with the Clerk of the Peace, along with the following documents:

- (a) a statement by the accused person in the form set out in Form 4 of the Schedule;

Schedule

- (b) a statement by the Attorney-at-law for the accused person in the form set out in Form 5 of the Schedule;
- (c) if a Court Interpreter was used during plea discussions, a certificate in the form set out in Form 6 of the Schedule, by the Court Interpreter as to the accuracy of the interpretation during the plea discussion and the accuracy of the translation of the plea agreement;
- (d) victim impact statements, if any; and
- (e) the complaint or draft indictment in the case of committal proceedings.

(3) Where an accused person is before the High Court, the plea agreement shall be filed with the Registrar of the Court, along with the documents referred to in subsection (2)(a) to (d) and the indictment.

Form and filing of plea agreement with an unrepresented person

20. (1) A plea agreement concluded between a prosecutor and—

- (a) an unrepresented accused person; or
- (b) an unrepresented suspect,

shall be in the form set out in Form 7 of the Schedule and shall be signed by both parties in the presence of a Justice of the Peace.

(2) Where an unrepresented accused person is before a Magistrate, the plea agreement shall be filed with the Clerk of the Peace, along with the following documents:

- (a) a statement in the form set out in Form 1 or Form 1A of the Schedule, where applicable;
- (b) if a Court Interpreter was used during plea discussions, a certificate in the form set out in Form 6 of the Schedule,

Schedule

by the Court Interpreter as to the accuracy of the interpretation during the plea discussion and the accuracy of the translation of the plea agreement;

- (c) victim impact statements, if any; and
- (d) the complaint or draft indictment in the case of committal proceedings.

(3) Where an unrepresented accused person is before the High Court, the plea agreement shall be filed with the Registrar of the Court, along with the documents referred to in subsection (2)(a) to (c) and the indictment.

21. (1) Within twenty-eight days of the date that a plea agreement is filed, the matter shall be listed for a plea agreement hearing. Listing matters for plea agreement hearing

(2) If a matter is not listed before the Court for a plea agreement hearing within the period required under subsection (1)—

- (a) the prosecutor;
- (b) the Attorney-at-law for the accused person;
or
- (c) the accused person,

may make an application either orally or in writing in the form set out as Form 8 in the Schedule to have the matter listed for a plea agreement hearing.

22. (1) If a plea agreement is filed at any time before an accused person is committed to stand trial in the High Court, the Magistrate shall— Plea agreements at committal proceedings

- (a) cease conduct of the committal proceedings, if proceedings have commenced;
- (b) transfer the matter to the High Court for a plea agreement hearing; and

(c) within fourteen days of transferring a matter under paragraph (b), forward the following documents to the High Court:

- (i) all documents filed under section 19(2) or 20(2);
- (ii) witness statements, if any;
- (iii) documentary exhibits; and
- (iv) any other documents filed during the conduct of the committal proceedings.

(2) Where a Magistrate transfers a matter under subsection (1)(b), the Magistrate may grant bail to the accused person under the Bail Act.

Chap. 4:60

(3) Within fourteen days of receiving the documents forwarded by a Magistrate under subsection (1)(c), the matter shall be listed for a plea agreement hearing before the Court.

Director of Public
Prosecutions to
prefer indictments

23. Notwithstanding any other law to the contrary, if a plea agreement is filed before the commencement or conclusion of committal proceedings, the Director of Public Prosecutions shall prefer an indictment and file the indictment with the Registrar within fourteen days of the date that the matter is transferred under section 22(1)(b).

Procedure at
plea agreement
hearing

24. (1) A plea agreement hearing shall be held in open court unless, having taken all of the circumstances into consideration, the Court considers that the hearing should be held *in camera*.

(2) At a plea agreement hearing, the prosecutor shall disclose the following information to the Court in the presence of the accused person and his Attorney-at-law or in the presence of the accused person who has elected to represent himself under section 10:

- (a) the substance of, and reasons for the plea agreement;

- (b) whether a previous plea agreement has been disclosed to a Court in connection with the same matter and the substance of that plea agreement, if any;
- (c) if no victim impact statement is filed, whether the victim was informed of his right to make a victim impact statement and of the matters mentioned in sections 13 and 14; or
- (d) if a victim impact statement is filed, whether the victim would like to read his victim impact statement in open court or have the statement read by the prosecutor or an officer of the Court.

(3) Before accepting or rejecting a plea agreement, the Court shall make enquiries of the accused person in order to determine whether the accused person—

- (a) understands the nature and substance of the plea agreement, including the recommended sentence;
- (b) received legal advice before signing the plea agreement;
- (c) understands the nature of the offence with which he is charged and to which he is pleading;
- (d) understands that this trial shall be conducted by a Judge and jury, where applicable;
- (e) is aware of his rights, including the right to—
 - (i) plead not guilty;
 - (ii) be presumed innocent;
 - (iii) have the State prove its case beyond a reasonable doubt;
 - (iv) be represented by an Attorney-at-law at trial;
 - (v) cross-examine witnesses; and
 - (vi) testify in his or her own defence or to remain silent; and

(f) understands that the Court is not obligated to accept the plea agreement.

(4) If a victim impact statement is filed with the Court, the Court shall consider the views expressed in the victim impact statement before accepting or rejecting a plea agreement and the Court may accept or reject all or any part of a victim impact statement.

(5) An accused person may, with leave of the Court, cross-examine the victim on the contents of his victim impact statement, to the extent that the Court allows.

(6) Where a victim impact statement contains information that—

(a) is not permitted under section 14; or

(b) in the discretion of the Court should not be included in a victim impact statement,

the Court may rule the information is inadmissible and direct that it be redacted from the victim impact statement.

Plea agreement
not binding
on the Court

25. (1) The Court may reject a plea agreement entered into between the prosecutor and the accused person if the Court considers that it is in the interest of justice to do so.

(2) Notwithstanding subsection (1), where the Court makes a determination that there was an improper inducement offered to the suspect or accused person, the Court shall reject the plea agreement.

(3) Where a Judge or Magistrate rejects a plea agreement under subsection (1), the Judge or Magistrate shall—

(a) in open court, inform the accused person of his right to be tried again before another Judge or Magistrate;

- (b) within seven days of the rejection of the plea agreement, provide written notification to the Director of Public Prosecutions and the accused person of the reasons for rejecting the plea agreement; and
- (c) list the matter for trial.

(4) The rejection of a plea agreement by a Court shall not operate as a bar to the conduct of any subsequent plea discussions and plea agreement.

26. If the Court accepts the plea agreement, the accused person shall plead to the charge. Procedure when a plea agreement is accepted

27. (1) If an accused person withdraws from the plea agreement and fails to enter a plea of guilty at a plea agreement hearing in the High Court, the Judge may— Accused's withdrawal from plea agreement

- (a) send the case back to the Magistrate's Court for the conduct of committal proceedings where the matter was transferred to the High Court under section 22(1)(b); or
- (b) list the matter for trial in the High Court.

(2) If a case is sent back to the Magistrate's Court under subsection (1), committal proceedings shall commence before a new Magistrate as if the plea agreement had not been entered into.

PART V

GENERAL

28. (1) Subject to subsection (2), an accused person may appeal to the Court of Appeal against the Court's rejection of a plea agreement. Accused person's right of appeal against rejection of plea agreement

(2) The accused person shall give notice of appeal in the form set out as Form 9 in the Schedule within fourteen days of receiving written notification under section 25(2) of the Court's reasons for rejecting the plea agreement.

Director of Public
Prosecution's right of
appeal against rejection
of plea agreement

29. (1) The Director of Public Prosecutions may appeal to the Court of Appeal against the Court's rejection of a plea agreement.

(2) The Director of Public Prosecutions shall give notice of appeal in the form set out as Form 10 in the Schedule within fourteen days of receiving written notification under section 25(2) of the Court's reasons for rejecting the plea agreement.

Grounds for withdrawal
from plea agreement
and appeal by accused
person

30. (1) The Court may, upon application by an accused person, allow the accused person to withdraw from the plea agreement at any time before sentence, or to appeal against a conviction or sentence based on the plea agreement if—

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

(2) If an accused person appeals against a conviction or sentence on any of the grounds mentioned in subsection (1), the accused person shall give notice of appeal in the form set out as Form 9 in the Schedule within fourteen days of the sentence passed.

Application of
prosecutor to
set aside the
plea agreement,
conviction or sentence

31. (1) Notwithstanding an accused person's conviction and sentence pursuant to a plea agreement, the Director of Public Prosecutions may seek the leave of the Court of Appeal to have the agreement, conviction or sentence set aside if the prosecutor was—

- (a) in the course of plea discussions, wilfully misled by the accused person or by his Attorney-at-law in some material respect; or
- (b) induced to conclude the plea agreement by threats, force, bribery or any other means of intimidation or influence.

(2) If the Director of Public Prosecutions appeals against a sentence imposed in accordance with a plea agreement on the grounds referred to in subsection (1), the Director of Public Prosecutions shall give notice of appeal in the form set out as Form 10 in the Schedule within fourteen days of the sentence passed.

32. The Court of Appeal may, upon application by either party, extend the time within which notice of appeal may be given by the Director of Public Prosecutions or the accused person.

33. Evidence of the following matters is not admissible in civil or criminal proceedings against the accused person who entered into a plea agreement or is a party to plea discussions:

- (a) an offer to enter into a plea agreement or a statement made in connection with the offer;
- (b) a statement made during plea discussions or a plea agreement hearing; or
- (c) a plea agreement or guilty plea, which is later withdrawn.

34. A Court may, upon application by either party or in its discretion, order that the records of plea discussions or a plea agreement be sealed, if the Court is satisfied that the sealing of the records is in the interest of the effective administration of justice.

35. The Minister may, by Order subject to negative resolution of Parliament, amend the Schedule.

36. (1) The Minister may make regulations generally for the purpose of giving effect to the provisions of this Act.

(2) Regulations made under subsection (1) shall be subject to the negative resolution of Parliament.

Repeal of
Chap. 13:07

37. The Criminal Procedure (Plea Discussion and Plea Agreement) Act is repealed.

Transitional and
Savings

38. (1) The repeal of the former Act does not invalidate—

- (a) a plea discussion initiated or concluded;
- (b) a plea agreement concluded;
- (c) a plea agreement hearing held;
- (d) an existing matter or proceeding which has commenced or is pending before the Court;
- (e) a right of appeal subsisting; and
- (f) any document or form having effect,

under the former Act.

(2) Every plea discussion, plea agreement or plea agreement hearing and every matter and proceeding commenced under the former Act and pending or in progress immediately before this Act came into force may be continued, completed and enforced under the former Act.

SCHEDULE

FORM 1

[Section 10(1)]

(This Form applies if the accused/defendant does not wish to be represented by an Attorney-at-law)

REPUBLIC OF TRINIDAD AND TOBAGO

DECLARATION BY ACCUSED/DEFENDANT OF DESIRE TO REPRESENT SELF IN PLEA DISCUSSIONS

A.B.—The State/*Complainant*

v.

C.D.—The Accused/*Defendant*

WHEREAS the accused was on the day of..... 20..... charged with the following offence(s):

(a)

(b)

(c)

(d)

(e)

And as the prosecutor has informed me as to my right to representation by an Attorney-at-law during plea discussions and I have informed the prosecutor of my desire to represent myself.

And whereas I have voluntarily and of my free will agreed to enter into plea discussions with the prosecutor and—

- (a) I have (elected/not elected) to have a third party of my choice be present during plea discussions; and
- (b) I have agreed to the plea discussions being recorded.

Dated this day of, 20.....

(Signed)

(Signed)

.....

Prosecutor

.....

Accused/Defendant

FORM 1A

[Section 10(2)]

(This Form applies if the suspect does not wish to be represented by an Attorney-at-law)

REPUBLIC OF TRINIDAD AND TOBAGO

DECLARATION BY SUSPECT OF DESIRE TO REPRESENT SELF IN PLEA DISCUSSIONS

WHEREAS the Prosecutor has informed me as to my right to representation by an Attorney-at-law during plea discussions and I have informed the Prosecutor of my desire to represent myself.

And whereas I have voluntarily and of my free will agreed to enter into plea discussions with the Prosecutor and—

- (a) I have (elected/not elected) to have a third party of my choice be present during plea discussions; and
- (b) I have agreed to the plea discussions being recorded.

Dated this day of, 20.....

(Signed)

(Signed)

.....

Prosecutor

.....

Suspect

CERTIFICATION OF THE JUSTICE OF THE PEACE

I, Justice of the Peace for the County of, hereby certify that the above declaration was signed by the Prosecutor (name of Prosecutor)

and the suspect (name of suspect)

in my presence on theday of20.....

(Signed)

..... Justice of the Peace

FORM 2

(Section 17)

IMPACT STATEMENT FOR BUSINESS

The impact statement for business (ISB) gives you the opportunity to set out the impact that a crime has had on the business such as direct financial loss and wider impacts, e.g., operational disruption or reputational damage. The Court will take the statement into account when determining sentence.

In this statement you should not provide an opinion or recommendation on the sentence or sanctions that the Court should use. This is for the Court to decide. You should limit the information you give in this statement to the impact this particular crime has had on the business, rather than providing information on how any previous criminal activity may have affected the business (unless, for example, this crime results from the repeat offending of the same offender). You should not restate the facts of the offence or offer criticisms of the accused.

The business should consider carefully who to authorize as the representative to make the statement on its behalf. Once you have completed this form, you should return it to your police contact.

A person making an ISB on behalf of a corporation ("the duly authorized representative") shall be authorized to do so on its behalf. The duly authorized representative may be required to answer questions or be cross-examined on the ISB in Court.

The Prosecutor will be in touch to let you know the date of the first hearing date and at that stage, you will need to make or update your ISB through your duly authorized representative.

- Name of Business Affected
Business Address
Contact Name
Telephone Number
Address

Police Officer Attending

1. Financial Impact

2. Please check this box if the business suffered no financial losses as a result of this crime.

2.1 *Direct financial losses*

These could include but are not limited to:

- Assets lost or stolen
- Damage to buildings and property

3. *Non-Financial Impact*

Please explain how the incident has had a non-financial impact on your business. This could include:

- Reputational damage
- Physical injuries sustained by staff or customers

3.1 *Other, indirect financial costs*

These could include but are not limited to:

- Loss of custom
- Impact on consumer confidence
- Staff time
- Expenditure on security measures (e.g., physical infrastructure, IT)
- Medical expenses
- Costs of contractual staff

Please explain how your business has suffered an indirect financial loss as a result of the crime.

4. *Other Comments*

Please use this space to set out any further comments you wish to make about the impact of the crime on your business.

Declaration:

This statement [consisting of ____ page(s) signed by me] is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated anything which I know to be false, or do not believe to be true.

Signed.....

Date.....

(This Form applies if the accused/defendant is represented by an Attorney-at-law)

REPUBLIC OF TRINIDAD AND TOBAGO

PLEA AGREEMENT

No.

A.B.—The State/*Complainant*

v.

C.D.—The Accused/*Defendant*

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

(a)

(b)

(c)

(d)

And whereas a plea agreement was on the day of,
20..... concluded between the prosecutor and the Attorney-at-law 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 as a result of the accused/defendant pleading
guilty to the said offence(s), the prosecutor shall take the following course of action:

(a)

(b)

(c)

(d)

(e)

(f)

(g)

(h)

(i)

Dated this day of, 20.....

(Signed)

(Signed)

.....
Prosecutor

.....
Attorney-at-law for the Accused/Defendant

(Signed)

.....
Accused/Defendant

FORM 4

[Section 19(2)(a)]

STATEMENT BY THE ACCUSED/DEFENDANT

I have read this agreement and carefully discussed each paragraph with my Attorney-at-law. I understand the terms of this agreement and agree to it without reservation. I voluntarily and of my free will agree to those terms. I am pleading guilty to the charge(s). My Attorney-at-law has advised me of my rights, of possible defences, of the penalties and of the consequences of entering into this agreement. No promises, agreements, understanding or inducements have been made to me other than those contained in this agreement. No one has threatened or forced me in any way to enter into this agreement. I have had sufficient time to confer with my Attorney-at-law concerning the plea agreement. I am satisfied with the representation of my Attorney-at-law in this matter.

.....
Name of Accused/Defendant

.....
Date

STATEMENT BY THE ATTORNEY-AT-LAW REPRESENTING THE ACCUSED/DEFENDANT

I am the Attorney-at-law for
Name of the Accused/Defendant

I have read this agreement and carefully discussed each paragraph of this agreement with my client. Further, I have fully advised my client of his rights, of possible defences (if applicable), of the penalties and of the consequences of entering into this agreement. To the best of my knowledge and belief, my client's decision to enter into this agreement is an informed and voluntary one.

.....
Name of the Attorney-at-law representing the Accused/Defendant

.....
Signature

.....
Date

INTERPRETER'S CERTIFICATE

I, _____, declare that I am
(Insert Name of Person Translating)

(Check one)

a Licensed Court Interpreter as described in the Interpreter's Act, Chap. 6:54.

appointed by a Court to act as Interpreter in respect of the plea discussions and plea agreement between A.B.—The State/*Complainant* v. C.D.—The Accused Person/*Defendant*.

I am licensed/appointed by the Court to interpret and translate from the _____ language to the _____ language.

I further declare that I have accurately translated the plea discussions between A.B.—State/*Complainant* and C.D.—The Accused Person/*Defendant* and the attached Plea Agreement from the _____ language to the _____ language.

I declare to the best of my abilities and belief, that this is a true and accurate translation of the _____ language text of _____ the Plea Agreement between A.B.—The State/*Complainant* and C.D.—The Accused/*Defendant*.

Signature of Interpreter

Date

FORM 7

[Section 20(1)]

(This Form applies if the accused/defendant is not represented by an Attorney-at-law)

REPUBLIC OF TRINIDAD AND TOBAGO

PLEA AGREEMENT

No.

A.B.—The State/*Complainant*

v.

C.D.—The Accused/*Defendant*

WHEREAS the accused/defendant was on the day of
....., 20..... 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-at-law:

And whereas the accused/defendant informed the prosecutor that he did not wish to be represented by an Attorney-at-law and declared, *inter alia* before a Justice of the Peace his desire to represent himself and (to elect/ to not elect) to have a third party of his choice be present during plea discussions:

And whereas the accused also declared, before a Justice of the Peace, *inter alia*, that he was informed of his right to be represented by an Attorney-at-law and that he desired to represent himself and (to elect/ to not elect) to have a third party of his choice be present during plea discussions:

And whereas the accused/defendant agreed to have the plea discussions recorded:

And whereas a plea agreement was on the day of, 20..... 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)
- (b)
- (c)
- (d)
- (e)
- (f)
- (g)
- (h)
- (i)

Dated this day of, 20.....

(Signed)

(Signed)

.....
Prosecutor

.....
Accused/Defendant

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 the accused/defendant in my presence on the.....day of....., 20.....

(name of Prosecutor)

(name of Accused/defendant)

(Signed)

Justice of the Peace

FORM 8

[Section 21(2)]

APPLICATION FOR LISTING PLEA AGREEMENT HEARING

A.B.—The State/*Complainant*

v.

C.D.—The Accused Person/*Defendant*

COURT DETAILS:

Court
Division
Registry
Case Number

TITLE OF PROCEEDINGS:

A.B.—The State/*Complainant* v. C.D.—The Accused Person/*Defendant*

FILING DETAILS:

Person seeking hearing:
Contact Name and Address:

PERSON AFFECTED BY HEARING SOUGHT:

ORDER SOUGHT:

Case be listed for a plea agreement hearing

Signature

Date

FORM 9

[Sections 28(2) and 30(2)]

FORM OF NOTICE OF APPEAL IF APPELLANT IS THE ACCUSED/DEFENDANT

REPUBLIC OF TRINIDAD AND TOBAGO

To: A.B.

Registrar of the Court

Take notice that I (C.D.) aggrieved by a conviction or sentence (or order of rejection of plea agreement) of

....., dated

against me the said..... for having as therein alleged on the day of (here state briefly the conviction or sentence/order of rejection of plea agreement) do appeal against such conviction or sentence/order of rejection of plea agreement on the ground(s) that in the case of appeal against conviction or sentence, list one or more of the grounds cited in section 30(1) in the case of appeal against order of rejection of plea agreement, give grounds.

Dated thisday of, 20.....

.....
C.D. or his Attorney-at-law

FORM 10

[Sections 29(2) and 31(2)]

FORM OF NOTICE OF APPEAL OF THE DIRECTOR OF PUBLIC PROSECUTIONS

REPUBLIC OF TRINIDAD AND TOBAGO

To: A.B.

Registrar Court

Take notice that I, C.D., have cause to believe that, in the course of plea discussions, I was wilfully misled by the accused on the ground that and do appeal the matter on the aforementioned ground(s).

Dated thisday of, 20.....

.....
C.D

Passed in the House of Representatives this 6th day
of May, 2017.

Clerk of the House

I confirm the above.

Speaker

Passed in the Senate this day of , 2017.

Clerk of the Senate

I confirm the above.

President of the Senate

No. 13 of 2017

SECOND SESSION
ELEVENTH PARLIAMENT
REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

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

Received and read the

First time

Second time

Third time