

THE OFFICIAL GAZETTE 7TH AUGUST, 2008
LEGAL SUPPLEMENT - C

BILL No. 21 of 2008

Thursday 7th August, 2008

PARLIAMENT OFFICE
Public Buildings,
Georgetown,
Guyana.

7th August, 2008

The following Bill which will be introduced in the National Assembly is published for general information.

S. E. Isaacs,
Clerk of the National Assembly.



GUYANA

BILL No. 21 of 2008

CRIMINAL PROCEDURE
(PLEA BARGAINING AND PLEA AGREEMENT) BILL 2008

ARRANGEMENT OF SECTIONS

SECTION

PART I
PRELIMINARY

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

**PART II
PLEA BARGAINING**

4. Plea bargaining.
5. Improper inducement.
6. Representation by Attorney-at-Law.
7. Prohibition against plea bargaining.
8. Victim to be consulted.

**PART III
PLEA AGREEMENTS**

9. Plea agreement.
10. Hearing in Chambers.

**PART IV
MISCELLANEOUS**

11. Views of victim in open court.
12. Offer of accused to plead guilty.
13. Withdrawal from plea agreement by accused person or prosecutor before sentence.
14. Appeal against sentence.
15. Withdrawal from plea agreement by prosecution after conviction.
16. Inadmissible evidence.
17. Plea agreement not binding on the Court.
18. Legal aid to accused persons in certain circumstances.
19. Power to amend Schedule.
20. Power to make regulations.

SCHEDULE

**A BILL
Intituled**

AN ACT to provide for the establishment of a system of plea bargaining and plea agreements in criminal procedure and for matters connected therewith.

A.D.2008 Enacted by the Parliament of Guyana:-

**PART I
PRELIMINARY**

Short title and commencement. 1. This Act may be cited as the Criminal Procedure (Plea Bargaining and Plea Agreement) Act 2008 and shall come into operation on the date the Minister may by order appoint.

Interpretation. 2. In this Act—

(a) “Court” means the High Court or the Magistrate’s Court;

(b) “improper inducement” includes—

(i) coercion of an accused person to enter into a plea bargaining; and

(ii) fraudulent misrepresentation of a material fact by the prosecutor either before a plea bargaining is entered into or during the course of discussion on plea agreement;

(c) “plea agreement” or “agreement” means an agreement entered into—

(i) between the accused person and the prosecutor;

or

(ii) between the Attorney-at-law 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;

4

(d) "plea bargaining" means a discussion held with a view to arriving at an agreement-

(i) between an accused person and a prosecutor;
or

(ii) between an Attorney-at-law for an accused person and a prosecutor,

either before the arraignment of the accused person, or at any time after the trial of the accused person commences but before a sentence is pronounced;

(e) "particular course of action" includes-

(i) an application to the Court to dismiss other charges;

(ii) a recommendation to the Court to a particular sentence;

(iii) an agreement not to oppose a request by the accused person, or his Attorney-at-law, for a particular sentence;

(iv) an agreement that a specific sentence is appropriate for the disposal of the case;

(f) "prosecutor" means the Director of Public Prosecutions, an Attorney-at-law in the office of the Director of Public Prosecutions, a police prosecutor or an Attorney-at-law whom the Director of Public Prosecutions has authorized in writing to act on his behalf;

(g) "relative" means the spouse (including a reputed spouse), parent or step-parent, child or step-child of the victim.

Application of Act.

3. (1) This Act applies to a plea bargaining and a plea agreement in respect of all indictable or summary offences.

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

(3) Except as expressly agreed to by the Director of Public Prosecutions in a plea agreement, nothing in this Act shall affect the functions assigned to the Director of Public Prosecutions under article 187 of the Constitution.

PART II
PLEA BARGAINING

Plea bargaining. 4. (1) Where the Director of Public Prosecutions considers it desirable in the interest of justice in any case, he may, at any time before the judgment is pronounced enter into a plea bargaining with the Attorney-at-law of the accused person or where the accused person defends himself without availing himself of the services of an Attorney-at-law, with the accused person for the purpose of arriving at a plea agreement for Disposal of any charge against the accused.

(2) A prosecutor other than the Director of Public Prosecutions shall not enter into plea bargaining with an accused person or his Attorney-at-law, unless he first obtains the written authorization from the Director of Public Prosecutions.

Improper inducement.

5. (1) A prosecutor who uses an improper inducement to encourage an accused person to participate in a plea bargaining commits an offence and is liable on summary conviction to a fine of twenty-five thousand dollars and to imprisonment for five years.

(2) A police officer or the Attorney-at-law for an accused person who—

(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),

commits an offence and is liable on summary conviction to a fine of twenty thousand dollars and to imprisonment for five years.

(3) No prosecution under this section shall be instituted without the written consent of the Director of Public Prosecutions.

Representation by Attorney-at-law.

6. (1) Where an accused person has engaged the services of or avails himself of the services of an Attorney-at-law, a prosecutor may not engage in a plea bargaining directly with the accused person in the absence of his Attorney-at-law.

(2) A prosecutor shall inform an accused person of his right to

representation by an Attorney-at-law in the plea bargaining.

(3) An accused person who cannot afford to retain an ~~Attorney-at-law~~ may apply for legal aid.

(4) Notwithstanding subsection (3), the Judge, in the exercise of his jurisdiction, may appoint an Attorney-at-law for the accused person.

Prohibition
against
plea bargaining.

7. A prosecutor shall not suggest, conclude or participate in any plea bargaining that requires the accused person to plead guilty to an offence that—

(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.

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 bargaining.

(2) A prosecutor who arrives at a plea agreement with the accused person shall ensure that the victim is informed of 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.

9. (1) A plea agreement which has been concluded between the prosecutor and the Attorney-at-law for the accused person shall be set out as in **Form I** of the **Schedule** and where such agreement is concluded, the prosecutor shall file the agreement with the Registrar or the Clerk of the Court, as the case may be.

7.

(2) A plea agreement which has been concluded between the prosecutor and an unrepresented accused person shall be set out as in **Form II** of the **Schedule** 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 Court, as the case may be.

(3) Upon receipt and filing of the plea agreement, the Registrar or the Clerk of the Court shall set down the matter for hearing before a Judge or Magistrate, as the case may be.

Hearing in
Chambers.

10. (1) The prosecutor shall disclose to the Court, in Chambers, in the presence of the Attorney-at-law for the accused or, where the accused is unrepresented, in the presence of the accused—

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

(b) whether any previous plea 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, in open court, 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, unless in exceptional circumstances the agreement is justifiable in terms of the benefits that may accrue to the administration of justice, the protection of society or the protection of the accused.

PART IV MISCELLANEOUS

Views of victim
in
open court.

11. (1) Subject to subsection (2), the Judge or Magistrate shall in open court seek the views of the victim or a relative of the victim, before recording the terms of the agreement and

passing sentence.

(2) The Judge or Magistrate may, where he considers it prudent to do so, retire to Chambers to hear the views of the victim or relative, as the case may be, and such views shall be heard in the presence of the prosecutor and the Attorney-at-law for the accused or, in event that the accused is unrepresented, in the presence of the accused.

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, as the case may be, 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 from plea agreement by accused person or prosecutor before sentence.

13. (1) 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 misrepresentation as to the substance or consequences of a plea agreement; or

(c) the prosecutor has breached the terms of the plea agreement.

(2) A prosecutor who enters into a plea agreement shall be entitled to withdraw from that agreement before sentence or to appeal against an acquittal based on the agreement, if it was entered into by misrepresentation of facts or by any fraud or inducement or the accused has breached any term of the plea agreement.

Appeal against sentence.

14. (1) Where an accused person pleads guilty to an offence and, upon his conviction, receives a sentence that accords with,

9

or is within the range anticipated by, the plea agreement, the Director of Public Prosecutions 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 bargaining, was willfully misled by the accused person in some material respect; or

(b) the Court, in passing sentence, was willfully misled in some material respect.

(2) Where the Director of Public Prosecutions is of the opinion that the grounds described in subsection (1) (a) or (b) exist, he may appeal against the sentence with the leave of the Court of Appeal or a Judge thereof.

(3) The Director of Public Prosecutions shall give notice of appeal in such manner as is prescribed by the Rules of Court, within fourteen days of the sentence passed.

(4) The Court of Appeal or a Judge thereof may extend the time within which the notice of appeal may be given.

Withdrawal
from plea
agreement by
prosecution
after conviction.

15. (1) Notwithstanding the conviction of an accused person 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 where the prosecutor—

(a) was, in the course of plea bargaining, wilfully misled by the accused person or by his Attorney-at-law in some material respect; or

(b) was induced to conclude the plea agreement by conduct amounting to an obstruction of justice.

(2) The Director of Public Prosecutions shall give notice of appeal in such manner as prescribed by the Rules of Court within three months of the sentence passed.

(3) If the Court of Appeal is satisfied that there have been sufficient grounds for not preferring the appeal within the period of three months it may extend the time within which notice of appeal may be given.

- Inadmissible evidence. **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.
- Plea agreement not binding on the Court. **17.** The Judge or Magistrate may reject a plea agreement entered into between the prosecution and the accused person if he considers that it is not in the interests of justice to do so.
- Legal aid to accused persons in certain circumstances. **18.** Legal aid may be granted to an accused person in respect of the conduct of plea bargaining under this Act
- Power to amend Schedule. **19.** Subject to negative resolution of the National Assembly, the Minister may by order amend the Schedule.
- Power to make regulations. **20.** Subject to negative resolution of the National Assembly, the Minister may make regulations generally for the purpose of giving effect to the provisions of this Act.

SCHEDULE

[See section 9]

FORM I

Sec.9 (1)

**PLEA AGREEMENT
IN THE HIGH COURT OF GUYANA/MAGISTRATE'S COURT**

District.....

No.

A.B.—The State/Complainant

versus

C.D.—Accused/Defendant

The accused/defendant was on the day
of..... 2..... charged with the
following offence(s):

(a)

(b)

(c)

(d)

2. A plea agreement was on the day of,
2..... concluded between the prosecutor and the Attorney-at-law for the
accused/accused/defendant:

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:

3. 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-at-law for the accused/Accused for a particular sentence; []

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

Dated this day of, 2.....

(Signed)
Prosecutor

(Signed)
Attorney-at-law for Accused/Defendant

(Signed)

Accused/Defendant

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

DECLARATION BY THE ACCUSED PERSON

I have read this agreement and carefully considered/discussed each paragraph with my Attorney-at-law-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/I am fully aware of my rights, of possible defences, of the penalties and of the consequences of entering into this agreement/I have no Attorney -at-law engaged. 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 consider/confer with my Attorney-at-law-at-law concerning the plea agreement.

I am satisfied with the representation of my Attorney-at-law-at-law in this matter.

Place.....

Signature

Date:

Name of Accused.

FORM II

Sec.9(2)

PLEA AGREEMENT

IN THE HIGH COURT OF GUYANA/MAGISTRATE'S COURT

District.....

No.

A.B. — The State/Complainant

versus

C.D. — Accused/Defendant

The accused/defendant was on the day of..... 2..... charged with the following offence(s):

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

2. The prosecutor informed the accused/defendant that he could be represented by an Attorney-at-law and the accused/defendant informed the prosecutor that he did not wish to be represented by an Attorney-at-law:

3. A plea agreement was on the day of, 2..... concluded between the prosecutor and the accused/defendant:

4. It has been agreed that the accused/defendant shall plead guilty to—

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

(e)

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

5. It has been 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, 2.....

(Signed)

(Signed)

Prosecutor

Accused/Defendant

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

DECLARATION BY THE ACCUSED PERSON

I have carefully read this agreement 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). I know 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 consider the plea agreement matter.

Place

Signature

Date,.....

Name of Accused.

CERTIFICATION OF JUSTICE OF THE PEACE

I, Justice of the Peace for the County/District of
....., hereby certify that the above plea agreement
was signed by
the prosecutor, and (*name of prosecutor*)
the Attorney-at-law for accused/accused/defendant, in
my (*name of*
Attorney-at-law) presence on
the day of, 2.....

(Signed)
Justice of the Peace

EXPLANATORY MEMORANDUM

The Bill seeks to pave way for the implementation of a structured plea bargaining process in the criminal justice system in Guyana.

The provisions of the Bill are designed to establish plea negotiations and plea agreements as part of the administration of the criminal justice system in Guyana for speedy disposal of cases. The Bill allows the Director of Public Prosecutions (DPP) or any prosecutor, police prosecutor or Attorney-at-law authorized by the DPP on the one side and the accused, through his Attorney-at-law or by himself on the other to negotiate and enter into a plea agreement. The law seeks to reward a person who has entered into a plea agreement and is cooperating with law enforcement authorities or whose cooperation is beneficial to the administration of criminal justice. In the meantime, to ensure that the plea is voluntary, the accused is granted a right to representation by an Attorney-at-law-at-law.

Clause 1 sets out the short title of the proposed legislation. It also empowers the Minister to appoint by order the date of commencement of the proposed legislation.

Clause 2 defines certain words and expressions used in the Bill. These include "Court", "improper inducement", "plea bargaining" and "plea agreement".

Clause 3 lays down the applicability of the Act. The provisions of plea bargaining and plea agreement will be applicable in respect of all indictable and summary offences.

Clause 4 lays down the procedure for plea bargaining. A plea bargaining may be held, in such cases as the Director of Public Prosecutions (DPP) may consider it desirable, between the prosecutor and the Attorney-at-law of the accused person and where there is no Attorney-at-law engaged for the accused, with the accused person.

Clause 5 provides for the punishment of prosecutors who make improper inducement to encourage an accused person to participate in a plea bargaining. However, no prosecution under this clause shall be instituted without the written consent of the Director of Public Prosecutions.

Clause 6 deals with representation of accused persons by Attorney-at-law. If the accused person avails himself of the services of an Attorney-at-law to defend him, the plea bargaining may be conducted by the prosecutor through the Attorney-at-law.

Clause 7 deals with the circumstances under which plea bargaining may not be suggested by the prosecutor.

Clause 8 provides for the prosecutor to obtain the views of the victims of the offence before concluding plea bargaining. It also makes it necessary for the prosecutor to ensure that the victim is told the substance and the reasons for the plea agreement unless there are compelling reasons for not disclosing them.

Clause 9 deals with plea agreements concluded between the prosecutor and the Attorney-at-law of the accused or between the prosecutor and the accused person. The relevant forms are in the Schedule.

Clause 10 provides for hearing by a Judge in Chambers.

Clause 11 lays down the requirement of obtaining the views of the victims by the Judge or the Magistrate, as the case may be, in open court before recording the terms of the agreement and passing sentence.

Clause 12 deals with the offer to the accused person to plead guilty. If the prosecutor agrees to accept the offer of pleading guilty the matter is required to be disposed of accordingly and otherwise the trial will continue.

Clause 13 provides for withdrawal of plea agreement by the accused person or by the prosecutor in certain circumstances.

Clause 14 provides for the admissibility of appeal by the Director of Public Prosecutions in certain circumstances.

Clause 15 provides for withdrawal from plea agreements by the prosecution after conviction

Clause 16 provides that the evidence of a plea agreement later withdrawn or a statement made in connection with any plea agreement or offer is not admissible in any proceedings.

Clause 17 provides that a plea agreement is not binding on the Court if the Court considers it as not in the interest of justice.

Clause 18 deals with providing legal aid to the accused persons in respect of the conduct of plea bargaining under the proposed legislation.

Clause 19 empowers the Minister to amend the Schedule by order.

Clause 20 empowers the Minister to make regulations for giving effect to the provisions of the proposed legislation.

The Schedule contains the forms used for plea negotiations and plea agreements.



Minister of Home Affairs.