

Fourth Session Fifth Parliament Republic of Trinidad
and Tobago



REPUBLIC OF TRINIDAD AND TOBAGO

Act No. 11 of 1999

[L.S.]

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

[Assented to 8th September, 1999]

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

PART I

PRELIMINARY

1. This Act may be cited as the Criminal Procedure Short title
(Plea Discussion and Plea Agreement) Act, 1999.

Interpretation

2. In this Act—

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

Chap. 1:01

“Director of Public Prosecutions” means the Public Officer appointed under section 90 of the Constitution to undertake to execute the responsibilities assigned to him under that section;

“improper inducement” includes—

(a) the coercion of an accused person to enter into a plea discussion; and

(b) the fraudulent misrepresentation of a material fact by the prosecutor either before a plea discussion is entered into or during the course of such discussion;

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

(a) between the accused person and the prosecutor; or

(b) between the 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—

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

(b) between an attorney 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, with the view towards arriving at an agreement;

“particular course of action” includes the following:

- (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 person, or his attorney, for a particular sentence;
- (d) an agreement that a specific sentence is appropriate for the disposition of the case;

“prosecutor” means the Director of Public Prosecutions, an attorney in the office of the Director of Public Prosecutions, a police officer or an attorney to whom the Director of Public Prosecution has granted a *fiat*;

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

3. (1) This Act applies to a plea discussion and a plea Application of Act 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.

PART II

PLEA DISCUSSIONS

Plea discussion

4. (1) Subject to subsection (2), 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) A prosecutor other than the Director of Public Prosecutions shall not enter into plea discussions with an accused person or his attorney, unless he first obtains the written permission of 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 discussion 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 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).

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

Representation by
attorney

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.

(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 1

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

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

Prohibition against
plea discussions

- (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.

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.

Victim to be
consulted

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

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.

Form 2

Form 3

(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 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.

Hearing in
Chambers

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

(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, 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 will accrue to the administration of justice, the protection of society or the protection of the accused.

PART IV

GENERAL

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. ^{Views of victim in open court}

(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 for the accused or, in event that the accused is unrepresented, in the presence of the accused.

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. ^{Offer of accused to plead guilty}

(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
agreement by
accused person

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 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. (1) 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 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 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.

(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 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 notice of appeal may be given.

15. (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 where the prosecutor—

Withdrawal from
agreement by
prosecution

- (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.

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

(3) The Court of Appeal may extend the time within which notice of appeal may be given.

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.

Inadmissible
evidence

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 interest of justice to do so.

Plea agreement not
binding on the Court

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

Amendment to
Legal Aid and Advice
Act, Chap. 7:07

- “(c) plea discussions and plea agreements under the Criminal Procedure (Plea Discussion and Plea Agreement) Act, 1999.”.

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

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

(Signed)
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 Attorney)

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

(Signed)
Justice of the Peace

Passed in the House of Representatives this 19th day of February, 1999.

J. SAMPSON-JACENT
Clerk of the House

Passed in the Senate this 29th day of June, 1999.

N. COX
Clerk of the Senate

Senate amendments agreed to by the House of
Representatives this 2nd day of July, 1999

J. SAMPSON-JACENT
Clerk of the House