

ABILL

ENTITLED

AN ACT to Repeal the *Criminal Justice (Plea Negotiations and Agreements) Act* and make new provisions for a system of plea negotiations and plea agreements; and for connected matters.

[ ]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

*Preliminary*

1. This Act may be cited as the Plea Negotiations and Agreements Act, 2017. Short title.

2. In this Act, unless the context otherwise requires—

“agreement” means an agreement made under section 8;

“document” means, in addition to a document in writing, any thing or manner in which information of any description is recorded or stored;

“member of the victim’s immediate family” means—

(a) the victim’s—

- (i) spouse, as defined by section 2(1)(d) of the *Intestates’ Estates and Property Charges Act*;
- (ii) child, adopted child or stepchild;
- (iii) brother, sister, stepbrother or stepsister;
- (iv) parent or step parent; or
- (v) grandparent; or

(b) 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;

“negotiations” means negotiations under section 5;

“Plea Judge” means a Judge of the Supreme Court or a Judge of a Parish Court who participates at any given time in negotiating, bargaining and the administration of plea negotiations and agreements;

“prosecutor”, in relation to a case, means—

- (a) the Director of Public Prosecutions;
- (b) an attorney-at-law employed in the Office of the Director of Public Prosecutions;
- (c) a Clerk of the Courts;

- (d) an attorney-at-law to whom the Director of Public Prosecutions has granted a *fiat* to prosecute the case; or
- (e) a person who has initiated a private prosecution of the case;

“victim” means a person against whom the offence concerned is committed or who suffers physical injury, or loss or damage to property, as a result of the commission of the offence concerned.

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

(2) This Act does not affect the right of an accused person to plead guilty without entering into negotiations or agreements under this Act.

(3) Except as expressly agreed by the Director of Public Prosecutions in a plea agreement, nothing in this Act affects the powers conferred upon the Director of Public Prosecutions under section 94 of the *Constitution of Jamaica*.

4.—(1) Where an offence is punishable by a prescribed minimum penalty, the Plea Judge may, notwithstanding any other provision to the contrary, impose sentence without regard to the prescribed minimum penalty. Sentencing where plea agreement accepted.

(2) Where a particular sentence is outside of the sentence set out in the sentencing guidelines issued by the Chief Justice, if any, detailed reasons shall be given.

#### *Negotiations*

5.—(1) A prosecutor and an accused person, or where the accused person is represented by an attorney-at-law, a prosecutor and the attorney-at-law for the accused person, may engage in negotiations, at any time before trial, for the purpose of reaching an agreement in accordance with subsection (2), for the disposition of any charge against the accused person. Negotiation.

(2) An agreement under subsection (1) shall require that—

- (a) the accused person undertakes to—
  - (i) make a guilty plea to an offence which is disclosed on the allegations on which the charge against the accused person is based or the facts as agreed; and
  - (ii) fulfil the accused person's other obligations, if any, specified in the agreement; and
- (b) a prosecutor agrees to fulfil the other obligations of the State specified in the agreement.

(3) Where a prosecutor, other than the Director of Public Prosecutions, agrees to withdraw the charges or to allow the accused person to plead to a lesser offence (not originally included) than that for which the accused person is charged, the prosecutor shall not conclude an agreement with the attorney-at-law of an accused person, unless the prosecutor first obtains the written authorization of the Director of Public Prosecutions to conclude the agreement.

Representation  
by attorney-  
at-law.

6.—(1) Where an accused person has retained an attorney-at-law, a prosecutor shall not engage in a negotiation 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 and his right to apply for legal aid in respect of the negotiation.

(3) Where an accused person cannot afford to retain an attorney-at-law—

- (a) if the accused person is charged with an offence for which the punishment is death, the Court shall assign an attorney-at-law for the accused person at the public expense; and
- (b) in any other case, the Court in its discretion may assign an attorney-at-law for the accused person at the public expense.

(4) Where an accused person who has indicated that he wishes to be assigned an attorney-at-law is not assigned an attorney-at-law, the prosecutor shall not have any discussions directly with the accused

person, unless the accused person waives in writing his right to be represented by an attorney-at-law.

7.—(1) A prosecutor may obtain the views of the victim or a relative of the victim before concluding negotiations.

Victim to be consulted.

(2) A prosecutor who arrives at a plea agreement with the accused person shall inform the victim of the substance and reasons for the agreement, unless compelling reasons, such as the likelihood of serious harm to the accused or to another person, requires otherwise.

(3) Where the victim has died or is incapacitated, the prosecutor may communicate with a member of the victim's immediate family.

(4) Where the victim is a child—

- (a) under the age of fourteen years, representation may be made by one of his parents or his guardian or where the parents or guardian cannot be located, the Children's Advocate or his nominee;
- (b) who has attained the age of fourteen years but not attained the age of sixteen years, representation may be made by the child and one of his parents or his guardian or where the parents or guardian cannot be located, the Children's Advocate or his nominee; or
- (c) who has attained the age of sixteen years, representation may be made by the child.

#### *Plea Agreements*

8. A plea agreement which has been concluded between the prosecutor and the attorney-at-law for the accused person—

Plea agreements.

- (a) shall contain the information set out in the Schedule;
- (b) may be in the prescribed form; and
- (c) shall be signed by the prosecutor and the attorney-at-law for the accused person.

Schedule.

9.—(1) The prosecutor shall, in open court or, on a showing of good cause, in Chambers, inform the Plea Judge of the existence of the agreement—

Prosecutor to notify Court of existence of agreement.

- (a) before the accused person is required to plead; or
- (b) at any time after arraignment.

(2) The parties shall disclose the agreement in open court when the plea is offered, unless the court for good cause allows the parties to disclose the agreement in camera.

(3) Where a proposed or executed agreement is being discussed, the accused, accompanied by his attorney-at-law, may attend hearings held in Chambers with the approval of the plea judge.

Court may accept or refuse to accept agreement.

**10.** Subject to this Act, the Plea Judge may accept an agreement or refuse to accept an agreement.

Matters for consideration of Court before accepting plea agreement.

**11.** The Plea Judge shall, before accepting a plea agreement, make a determination in open court that—

- (a) the plea is voluntary and did not result from force, threats or promises (other than promises in the agreement);
- (b) the accused understands the nature, substance and consequence of the agreement;
- (c) there is a factual basis upon which the agreement has been made; and
- (d) acceptance of the agreement would not be contrary to the interests of justice.

Proceedings to be recorded.

**12.** The proceedings during which the accused person enters a plea under this Act shall be recorded and entered on the record—

- (a) by a court reporter or by such electronic or other means as may be specified by rules of court; or
- (b) where there is no court reporter and no electronic or other means is specified by rules of court, by the Plea Judge.

Refusal to accept agreement.

**13.—**(1) Subsection (2) shall apply where the Plea Judge decides that—

- (a) the offence for which the accused person is charged is not disclosed on the facts; or
- (b) there is no confirmation by the accused person of the agreement or the admissions contained in the agreement.

(2) The Plea Judge shall, in the circumstances described in subsection (1)—

- (a) refuse to accept the agreement;
- (b) inform the parties of the refusal to accept the agreement and the reasons for the decision; and
- (c) advise the accused person personally that the court is not required to follow the agreement and give the accused person an opportunity to withdraw the plea.

(3) The refusal to accept an agreement shall not operate as a bar to the conduct of subsequent negotiations and the conclusion of a subsequent agreement in respect of the same case.

**14.** Subject to section 24, if the court accepts an agreement and there is a guilty plea, the record shall include— Record of guilty plea.

- (a) written representation made by the victim or any member of the victim's immediate family, where available;
- (b) the information given to the accused person under section 11; and
- (c) the contents of the agreement.

**15.** Where the court accepts an agreement, the prosecutor may— Recommendations by prosecutor where court accepts an agreement.

- (a) recommend that the court dismiss other charges that are included on the indictment or the information;
- (b) recommend that a particular sentence be imposed;
- (c) recommend, or agree not to oppose the accused person's request that a particular sentence or sentencing range is appropriate or that a particular provision of the sentencing guidelines issued by the Chief Justice, if any, or policy statement, or sentencing factor does or does not apply (such a recommendation or request does not bind the court); or
- (d) agree that a specific sentence or sentencing range is the appropriate disposition of the case, or that a particular provision of the sentencing guidelines issued by the Chief Justice, if any, or policy statement, or sentencing factor does or does not apply (such a recommendation or request binds the court once the court accepts the agreement).

Withdrawal  
from  
agreement.

**16.—**(1) An accused who enters into an agreement shall be entitled to withdraw from that agreement—

- (a) before the court accepts the agreement, for any reason or no reason; or
- (b) after the court accepts the plea but before it imposes sentence, if—
  - (i) the court does not accept the agreement; or
  - (ii) the accused person can show a fair and just reason for requesting the withdrawal.

(2) The prosecutor shall be entitled to withdraw from an agreement before sentence where—

- (a) the prosecutor is satisfied that he was—
  - (i) in the course of negotiations, misled by the accused person or by his attorney-at-law in some material respect; or
  - (ii) induced to conclude the agreement by conduct amounting to an obstruction or perversion of the course of justice;
- (b) the accused person who offers to assist the prosecution fails to assist or is misleading with respect to the assistance being given or to be given.

Case to be  
heard by  
different  
Judge where  
agreement is  
refused or  
withdrawn.

**17.** Where the court refuses to accept an agreement under section 13, or an agreement is withdrawn under section 16, and the case proceeds to trial, the matter shall be heard by any Judge, other than the Plea Judge who refused to accept the agreement or before whom an agreement was withdrawn.

#### *Sentencing*

Court may  
accept or  
reject  
recommend-  
ation on  
sentence.

**18.—**(1) The court may accept or reject a recommendation on sentence from the prosecutor, the accused person or his attorney-at-law.



(2) Where the court accepts a recommendation on sentence, the sentence imposed may take account of the time spent in custody by the accused person.

(3) Where the court rejects a recommendation on sentence, the prosecutor, the accused person or the attorney-at-law for the accused person, may withdraw from the agreement.

**19.**—(1) A Plea Judge may impose a lesser sentence than the Plea Judge would otherwise impose on an accused person, having regard to the degree to which the accused person has assisted, or undertaken to assist, the Crown in the prevention, detection or investigation of, or in proceedings relating to, the offence concerned or any other offence, and having regard to the matters set out in subsection (2).

Power to reduce penalties for assistance provided to Crown.

(2) In deciding whether to impose a lesser sentence for an offence and the nature and extent of the sentence he imposes, the Plea Judge may consider the following matters—

- (a) the significance and usefulness of the accused person's assistance to the Crown concerned, taking into consideration any evaluation by the Crown of the assistance rendered or undertaken to be rendered;
- (b) the truthfulness, completeness and reliability of any information or evidence provided by the accused person;
- (c) the nature and extent of the accused person's assistance or promised assistance;
- (d) the timeliness of the assistance or undertaking to assist;
- (e) any benefits that the accused person has gained or may gain by reason of the assistance or undertaking to assist;
- (f) whether the accused person will suffer harsher custodial conditions as a consequence of the assistance or undertaking to assist;
- (g) any injury suffered by the accused person or the accused person's family, or any danger or risk of injury to the accused person or the accused person's family, resulting from the assistance or undertaking to assist;

- (h) whether the assistance or promised assistance concerns the offence for which the accused person is being sentenced or an unrelated offence;
- (i) where the accused person has agreed to compensate the victim; and
- (j) where the accused person offers to plead guilty soon after he has been charged or at the earliest possible time after the file is completed.

(3) A Plea Judge that imposes a lesser sentence under this section on an accused person because the accused person has assisted, or undertaken to assist, shall—

- (a) indicate to the accused person and may make a record of the fact, that the lesser sentence is being imposed for either or both of those reasons;
- (b) state the sentence that it would otherwise have imposed; and
- (c) where the lesser sentence is being imposed for both reasons, state the amount by which the sentence has been reduced for each reason.

(4) Subsection (3) does not limit any requirement that a Plea Judge has, apart from that subsection, to record the reasons for his decisions.

(5) The failure of a Plea Judge to comply with the requirements of subsection (3) with respect to any sentence does not invalidate the sentence.

#### *Post Sentence Negotiations and Agreements*

Post  
sentence  
negotiations  
and  
agreements.

**20.** A convicted person who is serving a sentence and wishes to assist the prosecutor may enter into post sentence negotiations and agreements with a view to a reduction in sentence or other benefit.

Review of  
sentence of  
convicted  
person.

**21.—(1)** A prosecutor may refer a sentence for review to the Plea Judge or court that entered the original sentence, if possible, if it is in the interest of justice to do so.

(2) The Plea Judge may review a sentence under subsection (1) where—

- (a) the convicted person received a reduced sentence on an undertaking to assist under the Act but knowingly failed to give any assistance in accordance with the agreement, or misled the prosecutor;
- (b) the convicted person received a reduced sentence under an agreement, and has undertaken in a separate agreement to give further assistance; or
- (c) the convicted person did not receive a reduced sentence, but subsequently gave, or undertook in an agreement to give, assistance in connection with the investigation or prosecution of an offence.

(3) In reviewing a sentence under subsection (1), the Plea Judge or the court that entered the original sentence shall have regard to the extent and nature of the assistance given or offered and the period of the sentence that has been served.

(4) A person who has been convicted of an offence for which the sentence is fixed by law may enter into post sentence negotiation if he did not plead guilty to the offence for which he was sentenced.

**22.—**(1) This section applies if—

- (a) the Court has passed a sentence on a person in respect of an offence; and
- (b) the person falls within subsection (2).

(2) A person falls within this subsection if—

- (a) the person receives a reduction in sentence as a result of his having offered under a written agreement to give assistance to the prosecutor or investigator of an offence but he knowingly fails to any extent to give assistance in accordance with the agreement;
- (b) the person receives a reduction in sentence in consequence of his having offered in accordance with a written agreement

Assistance by  
accused  
person:  
review of  
sentence.

to give assistance to the prosecutor or investigator of an offence and, having given the assistance in accordance with the agreement, in accordance with another written agreement gives or offers to give further assistance; or

- (c) the person receives a sentence which is not reduced but in accordance with a written agreement he subsequently gives or offers to give assistance to the prosecutor or investigator of an offence.

(3) A prosecutor may, at any time, refer the case back to the Court by which the sentence was passed if—

- (a) the person is still serving his sentence; and
- (b) the prosecutor thinks it is in the interest of justice to do so.

(4) A case that is so referred under subsection (3) shall, if possible, be heard by the Judge who passed the sentence to which the referral relates.

(5) If the court is satisfied that a person who falls within subsection (2)(a) knowingly failed to give the assistance, the court may substitute for the sentence to which the referral relates such greater sentence (not exceeding that which it would have passed but for the agreement to give assistance) as it thinks appropriate.

(6) In a case of a person who falls within subsection (2)(b) or (c) the court may—

- (a) take into account the extent and nature of the assistance given or offered;
- (b) substitute for the sentence to which the referral relates such lesser sentence as it thinks appropriate.

(7) Any part of the sentence to which the referral relates which the person has already served shall be taken into account in determining when a greater or lesser sentence imposed by subsection (5) or (6) has been served.

(8) A person in respect of whom a reference is made under this section and the prosecutor may, with the leave of the Court of Appeal, appeal to the Court of Appeal against the decision of the Court.

(9) A reduction in sentence is a sentence passed in accordance with subsection (6).

*General*

**23.—**(1) Evidence of the following matters is not, in any civil or criminal proceedings, admissible against the accused person who entered into the agreement or is a party to the negotiations— Admissibility.

- (a) a plea of guilty which was later withdrawn or any statement made in the course of any proceedings under this Act regarding the plea of guilty; or
- (b) subject to subsection (2), any statement made in the course of negotiations with the prosecutor which does not result in a plea of guilty or which results in a plea of guilty that is later withdrawn or rejected.

(2) The court may admit a statement described in subsection (1)(b)—

- (a) in any proceeding in which another statement made during the same plea or negotiations has been introduced if, in fairness, the statements ought to be considered together; or
- (b) in a criminal proceeding for perjury or malicious falsehood, if the accused person made the statement under oath, on the record, and with an attorney-at-law present.

**24.** The Plea Judge may, upon application or in his discretion, as the case may be, order that the records of negotiations or an agreement be sealed, where the Plea Judge is satisfied that the sealing of the records is in the interest of the effective administration of justice. Sealing of records.

**25.—**(1) Every person having an official duty or being employed in the administration of this Act shall regard and deal with as secret and confidential all documents or information relating to an agreement before it is presented to the Court or after the records of the agreement are sealed by the Court. Obligation for secrecy.

(2) Every person referred to in subsection (1) having possession of or control over any documents or information, who at any time communicates or attempts to communicate anything contained in such documents or any information to a person otherwise than in

accordance with this Act or under a court order, commits an offence and shall be liable on summary conviction in a Parish Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding twelve months.

(3) A person to whom any document or information is communicated in accordance with this Act shall regard and deal with the document or information as secret and confidential.

(4) A person referred to in subsection (3) who communicates or attempts to communicate any document or information referred to in that subsection to a person, otherwise than for the purposes of this Act, commits an offence and shall be liable on summary conviction in a Parish Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding twelve months.

Amendment  
of Schedule.  
Schedule.

**26.** The Minister may, by order subject to affirmative resolution, amend the Schedule.

Regulations.

**27.** The Minister may make regulations generally for the purpose of giving effect to the provisions of this Act and the regulations shall be subject to affirmative resolution.

Minister may  
amend  
monetary  
penalties.

**28.** The Minister may, by order subject to affirmative resolution, amend the monetary penalties specified in this Act.

Review of  
Act.

**29.—**(1) This Act shall be reviewed, from time to time, by a committee of both Houses of Parliament appointed for that purpose.

(2) The first review shall be conducted not later than five years after the date of commencement of this Act.

Amendment  
of *Criminal  
Justice  
(Administration)  
Act.*

**30.** Sections 42A, 42B, 42C, 42D, 42E, 42F, 42G, 42H, 42I, and 42J of the *Criminal Justice (Administration) Act* are repealed.

**31.** Section 15 of the *Legal Aid Act* is amended by deleting the words “section 4 of the *Criminal Justice (Plea Negotiations and Agreements) Act, 2005*” and substituting therefor the words “section 5 of the *Plea Negotiations and Agreements Act*”.

Amendment  
of *Legal Aid  
Act.*

**32.** The *Criminal Justice (Plea Negotiations and Agreements) Act* is repealed.

Repeal of  
*Criminal  
Justice (Plea  
Negotiations  
and  
Agreements)  
Act.*

## SCHEDULE (Sections 8 and 26)

*Contents of Plea Agreement*

1. The name and jurisdiction of the court in which the matter is held or to be held.
2. The number of the indictment or the information and the file number.
3. The name, position, business address, business telephone, e-mail address and facsimile numbers of the prosecutor.
4. The name, position, business address, business telephone, e-mail address and facsimile numbers of the attorney-at-law for the accused person.
5. The proper name and alias, if any, and the last known address of the accused person.
6. The original indictment or information shall be attached to the agreement.
7. The draft indictment or information shall be attached to the agreement.
8. The elements of the various offences to which the accused person is pleading shall be set out.
9. A statement of facts may be attached and incorporated by reference.
10. Any document containing any promise, agreement, understanding or inducement which forms part of the agreement shall be attached to the agreement.
11. A statement that the accused person was informed of, and has waived, the following rights—
  - (a) the right not to be compelled to give self-incriminating evidence;
  - (b) the right to confront and cross-examine any witnesses against the accused person; and
  - (c) the right to pursue pre-trial motions and appeal preliminary points.
12. A statement that the provisions of the agreement are not binding on the court.
13. A statement of the rights of the accused person under the agreement, including the right to persist in a plea of not guilty.
14. The obligations of the accused person under the agreement.
15. The obligations of the Crown under the agreement.
16. A statement that the Crown is free to prosecute the accused person for any other unlawful past conduct which is not the subject of the agreement or for which the accused person has not been acquitted or convicted, or any unlawful conduct that occurs after the date of the agreement.



17. A statement that the Director of Public Prosecutions may, in any case where the Director of Public Prosecutions considers it desirable so to do, discontinue at any stage before judgment is delivered any criminal proceedings instituted or undertaken by the Director of Public Prosecutions or any other person or authority.

18. The grounds upon which an accused person may withdraw from the agreement.

19. The following statement by the accused—

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 or charges. My attorney-at-law has advised me of my rights, of possible defences, of the penalties and of the reasons for and 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.

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*Name of Accused*

*Date*".

20. The following statement by the attorney-at-law representing the accused—

" I am the Attorney-at-law for (*Name of Accused*). 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, of the penalties, and of the reasons for and 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.

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*Name of attorney-at-law representing accused*

*Date*".

21. Such other provision as the Director of Public Prosecutions considers necessary or desirable.

Passed in the House of Representatives this 19th day of April, 2017 with eleven (11) amendments.

PEARNEL P. CHARLES, CD, JP, MP  
*Speaker*

## MEMORANDUM OF OBJECTS AND REASONS

The Criminal Justice (Plea Negotiations and Agreements) Act, "the Act", gives statutory recognition to plea negotiations and agreements which, prior to its enactment, were conducted by the Director of Public Prosecutions under common law rules.

The Act has been underutilized and so the then Minister of Justice appointed a working group to identify problems contributing to its underutilization and recommend changes to the current statutory framework that will be conducive to achieving the desired objectives. The report of the working group was considered and consequent upon a change in administration further consultations were made.

This Bill seeks to implement the recommendations set out in the *Report of the Plea Bargaining Working Group on the Review of the Plea Bargaining Legislation of Jamaica* and further decisions of the Government by, *inter alia*—

- (a) widening the definition of prosecutor to include persons who are granted fiats to prosecute cases and persons who initiate private prosecutions;
- (b) providing for post sentence plea negotiations;
- (c) confirming the power of the Plea Judge to reduce penalties for assistance provided to the Crown or to impose a lesser sentence than he would otherwise impose on an accused person having regard to the degree to which the administration of justice has been facilitated by the accused person or his attorney-at-law; and
- (d) empowering the Judge to order that the records of negotiations or an agreement be sealed, where the Judge is satisfied that the sealing of the records is in the interests of the effective administration of justice.

DELROY CHUCK  
Minister of Justice

A BILL

ENTITLED

AN ACT to Repeal the *Criminal Justice (Plea Negotiations and Agreements) Act* and make new provisions for a system of plea negotiations and plea agreements; and for connected matters.

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As passed in the Honourable House of Representatives.

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