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MONDAY 11TH DECEMBER, 2023

THE OFFICIAL GAZETTE 11TH DECEMBER, 2023
LEGAL SUPPLEMENT — C

BILL No. 19 of 2023

Monday 11th December, 2023

PARLIAMENT OFFICE
Public Buildings,
Georgetown,
Guyana.

11th December, 2023.

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. 19 of 2023

CRIMINAL PROCEDURE (PLEA DISCUSSION, PLEA AGREEMENT AND ASSISTANCE AGREEMENT) BILL 2023

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A BILL

INTITULED

AN ACT to establish a system of plea discussions and plea agreements in criminal procedure and for matters connected thereto.

A.D. 2023 Enacted by the Parliament of Guyana:-

PART I
PRELIMINARY

Short title and commencement.

1. This Act may be cited as the Criminal Procedure (Plea Discussion, Plea Agreement and Assistance Agreement) Act 2023, and shall come into operation on the date the Minister may, by order, appoint.

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;

"assistance agreement" means an agreement made between the prosecutor and the suspect under section 4 of this Act;

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

"Court" means the High Court or Magistrate's Court, as the context may require;

"Court interpreter" means any person who is authorised or appointed by the Court to translate plea discussions or a plea agreement, or any part thereof, from one language to another;

"Director of Public Prosecutions" means the public officer appointed pursuant to section 116 of the Constitution;

Cap. 1:01

"improper inducement" includes—

(a) the laying of a charge, or causing a charge to be laid, without reasonable cause;

(b) the coercion of an accused person or suspect to enter into a plea discussion or conclude a plea agreement, including a threat—

(i) to lay a charge or cause a charge to be laid of the type described in paragraph (a); 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;

(c) the misrepresentation of a material fact either before a plea discussion is entered into or during the course of the discussion;

(d) an offer or promise, the fulfilment of which is not the function of the Director of Public Prosecutions; or

(e) an attempt to persuade the accused person or suspect to plead guilty notwithstanding the accused person's or suspect's denial of guilt;

"Minister" means the Minister responsible for legal affairs;

"offence" means a criminal offence;

"particular course of action" means a course of action referred to in section 4(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 suspect for the purpose of arriving at a plea agreement or assistance agreement;

"prosecutor" means the Director of Public Prosecutions or an attorney-at-law authorised, 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 or her parent, step-parent or guardian;

(ii) his or her spouse, cohabitant or fiancé;

(iii) his or her child, step-child or other dependent;

(iv) his or her brother, sister, stepbrother or step-sister;

(v) his or her grandparent; or

(vi) any appropriate 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;

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

Application of Act.

3. (1) This Act applies to both summary and 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 and assistance agreement.

4. (1) For the purposes of this Act, a plea agreement is an agreement made in the interest of justice between the prosecutor and an 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 the accused person or suspect or family members or friends of the accused person or suspect where there is evidence to sustain such charges against such persons;

(iv) an undertaking to recommend summary trial rather than trial on 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 or her attorney-at-law that a particular sentence be imposed;

(vii) a promise to proceed summarily rather than indictably; and

(viii) a recommendation to the Court that the record of the plea discussion and the plea agreement be sealed.

(2) For the purposes of this Act, an assistance agreement is an agreement made in the interest of justice between the prosecutor and a suspect in which—

(a) the suspect agrees to provide assistance to the prosecution or police;

(b) the conditions in subsection (1)(b) applies as it relates to a suspect;

(c) the suspect is not charged for the offence.

PART II
PLEA DISCUSSIONS

Time when plea discussions may be held.

5. A plea discussion may be held and a plea agreement or assistance agreement concluded at any time before charge or conviction as the case may be.

Permission of Director of Public Prosecutions required.

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

Improper inducements prohibited.

7. A prosecutor shall not use an improper inducement to encourage an accused person or suspect to participate in a plea discussion or conclude a plea agreement or assistance 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—

(a) the accused person or suspect to plead guilty to an offence that—

(i) is not disclosed by the evidence; or

(ii) 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—

(A) the benefits that will accrue to the administration of justice; or

(B) the protection of society from the prosecution of the accused person or suspect; or

(b) the prosecutor to withhold or distort evidence.

Plea discussion with represented person.

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

Procedure for plea discussion with unrepresented person.

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 or her right to be represented by an attorney-at-law during plea discussions;

(ii) of his or her right to protection against self-incrimination;

(iii) of his or her right to be presumed innocent;

(iv) of his or her right to remain silent;

(v) of his or her right to seek a sentence indication from the Court of the maximum sentence that the Court may impose if the accused person pleads guilty to an offence; and

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

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

(i) enter into plea discussions; and

(ii) represent himself or herself in those plea discussions; and

(c) the Court—

(i) has been informed of the matters set out in paragraphs (a) and (b);

Schedule

(ii) is satisfied that the accused person is competent to enter into plea discussions and conclude a plea agreement; and

(iii) approves of the initiation of plea discussions.

(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 or her right to be represented by an attorney-at-law during plea discussions;

(ii) of his or her right to protection against self-incrimination;

(iii) of his or her right to be presumed innocent;

(iv) of his or her right to remain silent; and

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

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

(i) desires to enter into plea discussions;

(ii) desires to represent himself or herself in those plea discussions; and

(iii) 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 or her and provide the suspect or his or her attorney-at-law with a written summary of the relevant evidence against him or her including any evidence in the possession of the State which materially weakens the case for the prosecution or assists the case for the suspect.

(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 or her attorney-at-law with a written summary of the relevant evidence against him or her including any evidence in the possession of the State which materially weakens the case for the prosecution or assists the case for the accused person.

(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 or her 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 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 of his or her right to enter into a plea discussion with the prosecutor—

(a) and to be represented by an attorney-at-law during the plea discussion; or

(b) under section 10(1), if the accused person does not wish to be represented by an attorney-at-law.

PART III
VICTIM IMPACT STATEMENT

Victim impact statement.

13.(1) Every victim may provide a victim impact statement explaining the physical or emotional harm, financial loss or other impact that the offence has had on the victim.

(2) Before a plea discussion is concluded, the prosecutor shall inform the victim that a victim impact statement may be provided 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 suspect shall ensure that the victim is informed—

(a) of 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) of 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) that his or her victim impact statement may be read in Court or have his or her 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 or herself.

Restriction on content of 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 by relative of 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.

Child victims.

16. (1) Where the victim is a child and the Court is satisfied that he or she is capable of understanding the nature and circumstances of the proceedings, the victim and one of his or her 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.

(2) Where the victim is a child and the Court is not satisfied that he or she is capable of understanding the nature and circumstances of the proceedings, 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.

Victim impact statement by a business.
Schedule

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

Duties of prosecutor.

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

(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 or her attorney-at-law as soon as it is reasonably practicable to do so and in any event, before it is filed with the Court.

PART IV

PLEA AGREEMENTS AND PLEA AGREEMENT HEARINGS

Form and filing of plea agreement with represented person.
Schedule

19. (1) A plea agreement concluded between a prosecutor and the attorney-at-law for an accused person or 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 Court and shall be accompanied by—

(a) a statement by the accused person in the form set out in Form 4 of the 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 as Form 6 in 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) the 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 and be accompanied by the documents referred to in subsection (2)(a) to (d) and the indictment.

Form and filing of plea agreement with unrepresented person.

Schedule

20. (1) A plea agreement concluded between a prosecutor and an unrepresented accused person or 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 Court and shall be accompanied by—

(a) a statement of the accused person 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 as Form 6 in the Schedule, by the Court Interpreter as to the accuracy of the interpretation during the plea discussions and the accuracy of the translation of the plea agreement;

(c) the victim impact statements, if any; and

(d) the complaint or a 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 and be accompanied by the documents referred to in subsection (2)(a) to (c) and the indictment.

Setting down matters for plea agreement hearing.

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

(2) If a matter is not set down 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 set down for a plea agreement hearing.

Plea agreements at committal proceedings.

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—

(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 2022.

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

No. 21 of 2022 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 or her attorney-at-law or in the presence of the accused person who has elected to represent himself or herself 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 or her 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 or her 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 the accused person is charged and to which the accused person is pleading;

(d) understands that the trial shall be conducted by a Judge and jury, where applicable;

(e) is aware of his or her rights, including the right to—

(i) not incriminate himself or herself;

(ii) plead not guilty;

(iii) be presumed innocent;

(iv) have the State prove its case beyond a reasonable doubt;

(v) be represented by an attorney-at-law at trial;

(vi) cross-examine witnesses; and

(vii) testify in his or her own defence or to remain silent;

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

(g) was offered an improper inducement to enter into plea discussions or conclude a 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 or her victim impact statement.

(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 that 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 of his or her 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) set down 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 a plea agreement.

Procedure when a plea agreement is accepted.

26. If the Court accepts the plea agreement, the accused person shall plead to the charge.

Accused or suspect's withdrawal from plea agreement or assistance agreement.

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—

(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) adjourn the matter for setting down in the High Court within thirty days.

(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.

(3) If a suspect withdraws from the assistance agreement, the agreement is void and charges may be instituted.

PART V

GENERAL AND MISCELLANEOUS PROVISIONS

Appeal against rejection of plea agreement by accused person.

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.

Schedule

(2) The accused person shall give notice of appeal in the form set out as Form 9 in the Schedule within twenty-eight days of receiving written notification under section 25(2) of the Court's decision to reject the plea agreement.

Appeal against rejection of plea agreement by Director of Public Prosecutions.

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

Schedule

(2) The Director of Public Prosecutions shall give notice of appeal in the form set out as Form 10 in the Schedule within twenty-eight of receiving written notification under section 25(3) of the Court's decision to reject the plea agreement.

Grounds for withdrawal from plea agreement.

30. The Court may, upon application by an accused person, allow the accused person to withdraw from the plea agreement at any time before sentence 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;

(c) the prosecutor has breached the terms of the plea agreement; or

(d) there are any other grounds upon which the plea agreement may be set aside by the Court in the interest of justice.

Setting aside plea agreement, conviction or sentence.

31. (1) Upon application by the Director of Public Prosecutions, the Court may set aside the plea agreement at any time before the sentence, if—

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

(b) the prosecutor was induced to conclude the plea agreement by threats, force, bribery or any other means of intimidation or influence;

(c) the accused person has agreed to assist the prosecution and either fails to assist or wilfully misleads the prosecution with respect to the assistance given; or

(d) there are any other grounds upon which the plea agreement may be set aside by the Court in the interest of justice.

(2) The Director of Public Prosecutions may appeal to the Court of Appeal, with leave of the Court of Appeal, against an accused person's conviction or sentence pursuant to a plea agreement where—

(a) the prosecutor, in the course of plea discussions, was wilfully misled by the accused person or his or her attorney-at-law in some material respect;
(b) the prosecutor was induced to conclude the plea agreement by threats, force, bribery or any other means of intimidation or influence;
(c) the accused person has agreed to assist the prosecution and either fails to assist or wilfully misleads the prosecution with respect to the assistance given; or
(d) there are any other grounds upon which the plea agreement may be set aside by the Court in the interest of justice.

(3) Where, in accordance with subsection (2), the Director of Public Prosecutions is granted leave to the Court of Appeal, the Director of Public Prosecutions shall give notice of Appeal in the form set out as Form 10 in the Schedule within twenty-eight days of the sentence passed.

Schedule

Extension of time for filing notice of appeal.

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.

Plea agreement inadmissible in criminal or civil court.

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.

Sealing of records.

34. A Court may, in exceptional circumstances, 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 justice and the Court shall give reasons for the order.

Power to amend Schedule.

35. Subject to negative resolution of the National Assembly, the Minister may amend the Schedule by Order.

Regulations.

36. Subject to negative resolution of the National Assembly, the Minister may make Regulations generally for the purposes of giving effect to the provisions of this Act.

Repeal.

Cap. 10:09

37. The Criminal Procedure (Plea Bargaining and Plea Agreement) Act, is hereby repealed.

Transitional and savings.

Cap. 10:09

38. (1) Notwithstanding the repeal of the Criminal Procedure (Plea Bargaining and Plea Agreement) Act, under section 37—

(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 subsisting right of appeal; or

(f) any document or form having effect,

under the repealed Act continues to be valid.

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

SCHEDULE

FORM 1

(section 10(1))

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

THE CO-OPERATIVE REPUBLIC OF GUYANA

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

A.B. [The State/Complainant]

vs.

C.D. [The Accused/Defendant]

WHEREAS I, the accused/defendant, was on the ..... day of ....., 20……..

charged with the following offence(s):

(a)

(b)

(c)

(d)

AND WHEREAS the prosecutor has informed me of 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 not been induced, threatened or forced in any way to enter into plea discussions.

Dated the .....day of ..... 20...

(Signed) (Signed)

....

Prosecutor Accused/Defendant

FORM 1A

(section 10(2))

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

THE CO-OPERATIVE REPUBLIC OF GUYANA

DECLARATION BY SUSPECT OF DESIRE TO REPRESENT SELF IN PLEA DISCUSSIONS

WHEREAS the prosecutor has informed me of 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;

(b) I have agreed to the plea discussions being recorded; and

(c) I have not been induced, threatened or forced in any way to enter into plea discussions.

Dated the .....day of ..... 20...

(Signed) (Signed)

....

Prosecutor Suspect

CERTIFICATION OF JUSTICE OF THE PEACE

I ……, Justice of the Peace for the [County/Region/Town/City] of ....., hereby certify that the above plea agreement was signed by the Prosecutor ....., and the suspect

(name of Prosecutor)

…… in my presence on the……day of……., 20…

(name of Suspect)

(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 authorised representative") shall be authorised to do so on its behalf. The duly authorised 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 authorised 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 willfully stated anything which I know to be false, or do not believe to be true.

Signed.....

Date.....

FORM 3

(section 19(1))

(Note: This Form applies if the accused/defendant/suspect is represented by an attorney-at-law)

THE CO-OPERATIVE REPUBLIC OF GUYANA

PLEA/ASSISTANCE AGREEMENT

No.

A.B. [The State/Complainant]

vs.

C.D. [The Accused/Defendant/Suspect]

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

(a)

(b)

(c)

(d)

AND WHEREAS a plea or assistance agreement was on the ..... day of ....., 20..... concluded between the prosecutor and the attorney-at-law for the accused/defendant/suspect:

AND WHEREAS it was agreed that the accused/defendant/suspect shall plead guilty to—

(a)

(b)

(c)

(d)

(e)

Or provide the following assistance to the police or prosecutor, namely:

(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/suspect pleading guilty to the said offence(s) or providing the specified assistance to the police and or prosecutor, the prosecutor shall take the following course of action:

(a)

(b)

(c)

(d)

(e)

(f)

(g)

(h)

(i)

Dated the .....day of ..... 20...

(Signed) (Signed)

....

Prosecutor Accused/Defendant/Suspect

(Signed)

.....

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

FORM 4

(section 19(2)(a))

STATEMENT BY THE ACCUSED/DEFENDANT/SUSPECT

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) [providing the following assistance to the police and or prosecutor, namely.....]

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 to 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/Suspect Date

FORM 5

(section 19(2)(b))

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

I am the attorney-at-law for .....

(Name of the Accused/Defendant/Suspect)

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/her 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/Suspect

....

Signature Date

FORM 6

(section 19(2)(c) and 20(2)(b))

INTERPRETER'S CERTIFICATE

I, ..., declare that I am:
(Insert Name of Person Translating)
Authorised/appointed by a Court to act as Interpreter in respect of the plea discussions and plea agreement between A.B.— [The State/Complainant] vs. C.D.— [The Accused Person/Defendant/Suspect].

I am authorised/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/Suspect] and the attached Plea Agreement [Assistance 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 [Assistance Agreement] between A.B.— [The State/Complainant] and C.D.— [The Accused/Defendant/Suspect].

....

Signature of Interpreter Date

FORM 7

(section 20(1))

(Note: This Form applies if the accused/defendant/suspect is not represented by an attorney-at-law)

THE CO-OPERATIVE REPUBLIC OF GUYANA

PLEA AGREEMENT/ASSISTANCE AGREEMENT

No.

A.B. [The State/Complainant]

vs.

C.D. [The Accused/Defendant/Suspect]

WHEREAS the accused/defendant/suspect was on the ..... day of ....., 20…..... charged with [suspected of committing] the following offence(s):

(a)

(b)

(c)

(d)

AND WHEREAS the prosecutor informed the accused/defendant/suspect that he/she should be represented by an attorney-at-law:

AND WHEREAS the accused/defendant/suspect informed the prosecutor that he/she did not wish to be represented by an attorney-at-law and declared, *inter alia*, before a Justice of the Peace his/her desire to represent himself/herself and to allow an independent third party identified, in writing, by the Court to be present during plea discussions:

AND WHEREAS the accused/defendant/suspect also declared, before a Justice of the Peace, inter alia, that he/she was informed of his/her right to be represented by an attorney-at-law and that he/she desired to represent himself/herself and to allow an independent third party identified, in writing, by the Court to be present during plea discussions:

AND WHEREAS the accused/defendant/suspect agreed to have the plea discussions recorded:

AND WHEREAS a plea agreement [assistance agreement] was on the ..... day of ....., 20..... concluded between the prosecutor and the accused/defendant/suspect:

AND WHEREAS it was agreed that the accused/defendant/suspect shall [plead guilty to—

(a)

(b)

(c)

(d)

(e)

provide the following assistance to the police or the prosecutor, namely

(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/suspect pleading guilty to the said offence(s) [providing the specified assistance], the prosecutor shall take the following course of action:

(a)

(b)

(c)

(d)

(e)

(f)

(g)

(h)

(i)

Dated the …….day of …….. 20...

(Signed)	(Signed)
.....	.....
Prosecutor	Accused/Defendant/Suspect

CERTIFICATION OF JUSTICE OF THE PEACE

I ....., Justice of the Peace for the [County/Region/Town/City] of ....., hereby certify that the above Plea Agreement [Assistance Agreement] was signed by the Prosecutor ....., and the

(name of Prosecutor)

accused/defendant/suspect ..... in my presence on

*(name of Accused/Defendant/*Suspect*)*

the.....day of....., 20...

(Signed)

.....

Justice of the Peace

FORM 8

(section 21(2))

APPLICATION FOR SETTING DOWN PLEA AGREEMENT HEARING

A.B. [The State/Complainant]

vs.

C.D. [The Accused/Defendant/Suspect]

COURT DETAILS:

Court	Division	Registry	Case Number

TITLE OF PROCEEDINGS:

A.B.— [The State/Complainant] vs. C.D.— [The Accused/Defendant/Suspect]

FILING DETAILS:

Person seeking hearing:

Contact Name and Address:

PERSON AFFECTED BY HEARING SOUGHT:

ORDER SOUGHT:

Case be set down for a plea agreement hearing

....

Signature Date

FORM 9

(section 28(2) and 30(2))

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

THE CO-OPERATIVE REPUBLIC OF GUYANA

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/or 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, list one or more of the grounds cited in section 30(1) and in the case of appeal against order of rejection of plea agreement, give grounds).

Dated this .....day of ....., 20.....

.....

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

FORM 10

(section 29(2) and 31(2))

FORM OF NOTICE OF APPEAL OF THE DIRECTOR OF PUBLIC PROSECUTIONS

THE CO-OPERATIVE REPUBLIC OF GUYANA

To: A.B.

Registrar of the 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(s) that

.....

..... and do appeal the matter on the aforementioned ground(s).

Dated this ……..day of ……., 20…….

…..…..……

C.D.

EXPLANATORY MEMORANDUM

This Bill seeks to provide for the establishment of a system of plea discussions, assistance agreements and plea agreements in criminal procedure and for matters connected thereto.

This Bill is divided into five (5) Parts and contains thirty-eight (38) clauses and one (1) Schedule.

Part I of the Bill provides for the preliminary provisions and contains **clauses 1** to **4**. **Clause 1** of the Bill provides for the short title and commencement of the Bill on a date to be appointed by the Minister by Order. **Clause 2** provides for the interpretation of certain terms used in the Bill including "improper inducement", "particular course of action", "suspect" and "victim". **Clause 3** of the Bill provides for the application of the Act to both summary and indictable offences and expressly clarifies that the Act does not affect the right of an accused person to plead guilty without entering into a plea bargaining nor the right of an accused person to seek a sentencing indication from the Court. **Clause 4** of the Bill provides a substantive definition of an assistance agreement and plea agreement and their scope.

Part II of the Bill provides for the procedure pertaining to plea discussions and contains **clauses 5** to **12**. **Clause 5** of the Bill provides for plea discussions to be held and plea agreements concluded at any time before conviction including before charges are instituted. **Clause 6** of the Bill requires the written permission of the Director of Public Prosecutions to be obtained prior to a prosecutor entering into a plea discussion or concluding a plea agreement. **Clause 7** of the Bill prohibits the use of improper inducements to encourage an accused person or suspect to participate in a plea discussion. **Clause 8** of the Bill prohibits 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 of the Bill prohibits a prosecutor from engaging in plea discussions with an accused person or suspect in the absence of his or her attorney-at-law, where that accused person or suspect has retained counsel to represent him or her. **Clause 10** of the Bill prohibits a prosecutor from

initiating plea discussions with an unrepresented accused person or suspect, unless the prosecutor informs the accused person or suspect of certain rights, *inter alia*, the right to be represented by an attorney-at-law. **Clause 11** of the Bill imposes a duty on the prosecutor to provide the suspect or accused person with a written summary of the evidence against the suspect or accused person 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 respectively. **Clause 12** of the Bill sets out the procedure to be followed by a Judge or Magistrate upon the first appearance of the accused in Court.

Part III of the Bill provides for victim impact statements and contains **clauses 13** to **18. Clause 13** of the Bill imposes a duty on the prosecutor to inform the victim of his or her right to provide a victim impact statement and require that certain content not be included in the victim impact statement. **Clause 14** of the Bill imposes restrictions on the contents of a victim impact statement. **Clause 15** of the Bill provides for relatives of the victim to provide a victim impact statement in circumstances where the victim has died, is ill or is otherwise incapacitated, or cannot be found. **Clause 16** of the Bill provides the procedure to be followed in circumstances where an impact statement is being provided by a victim who is a child. **Clause 17** of the Bill provides for a duly authorised representative of a business that has been the victim of a crime to provide a victim impact statement on behalf of that business. **Clause 18** of the Bill sets out the 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 provides the procedure to be followed in respect of plea agreements and plea agreement hearings and contains **clauses 19** to **27. Clause 19** of the Bill provides for circumstances where a plea agreement is concluded between a prosecutor and the attorney-at-law for an accused person or suspect and provides a list of documents which shall accompany the plea agreement and which must be filed with the Clerk of the Court or Registrar, as the case may be. **Clause 20** of the Bill provides for circumstances where a plea agreement is concluded between a prosecutor and an unrepresented accused person or suspect and provides a list of documents which shall accompany the plea agreement and which must be filed with the Clerk of the Court or Registrar, as the case may be. **Clause 21** of the Bill provides the procedure to be followed upon the filing of a plea

agreement. The clause would, *inter alia*, require the Clerk of the Court or Registrar, as the case may be, to set down the matter for a plea agreement hearing within twenty-eight days of the filing of the plea agreement.

Clause 22 of the Bill provides 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** of the Bill imposes a duty on 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** of the Bill provides 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** of the Bill provides that a plea agreement is not binding on the Court. **Clause 26** of the Bill provides that where a Judge or Magistrate accepts a plea agreement, the accused shall be requested to plead to the charge. **Clause 27** of the Bill provides the procedure to be followed in circumstances where an accused person withdraws from a plea agreement.

Part V of the Bill provides general and miscellaneous provisions and contains **clauses 28** to **38**. **Clause 28** of the Bill provides that an accused person may appeal to the Court of Appeal where a Court has rejected a plea agreement. **Clause 29** of the Bill provides that the Director of Public Prosecutions may appeal to the Court of Appeal where a Court has rejected a plea agreement. **Clause 30** of the Bill provides the grounds upon which an accused may withdraw from a plea agreement. **Clause 31** of the Bill 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** of the Bill provides for the extension of time for filing a notice of appeal.

Clause 33 of the Bill 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** of the Bill empowers a Court to order

that the records of plea discussions or a plea agreement be sealed, in the interest of justice and requires the Court to give reasons for the order. **Clause 35** of the Bill empowers the Minister to amend the Schedule by Order and **clause 36** of the Bill empowers the Minister to make regulations. **Clause 37** of the Bill provides for the repeal of the Criminal Procedure (Plea Bargaining and Plea Agreement) Act, Cap. 10:09. **Clause 38** of the Bill saves any actions, proceedings and decisions in respect of plea discussions or plea agreements commenced or taken under the repealed Act, upon the commencement of this Act.

The **Schedule** sets out the forms referred to in the Act.

.....

Hon. Mohabir Anil Nandlall, SC, MP
Attorney General and Minister of Legal Affairs