

HOUSE BILL NO. 439

INTRODUCED BY BARNETT, CROMLEY, J. RICE, HOFFMAN,
MERCER, TOOLE, BRADLEY, WHALEN, COBB

IN THE HOUSE

JANUARY 29, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

JANUARY 30, 1991 FIRST READING.

FEBRUARY 16, 1991 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 18, 1991 PRINTING REPORT.

FEBRUARY 21, 1991 POSTED ON CONSENT CALENDAR.

FEBRUARY 22, 1991 CONSENT CALENDAR, QUESTIONS AND ANSWERS.

FEBRUARY 23, 1991 THIRD READING, PASSED.
AYES, 98; NOES, 0.

TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 25, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

FIRST READING.

MARCH 5, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

MARCH 6, 1991 SECOND READING, CONCURRED IN.

MARCH 7, 1991 THIRD READING, CONCURRED IN.
AYES, 49; NOES, 0.

RETURNED TO HOUSE.

IN THE HOUSE

MARCH 8, 1991 RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *HOUSE* BILL NO. *439*
 2 INTRODUCED BY *Bennett Conley Joice*
 3 *Hoffman Moran* *1st* *Bridges* *Whalen* *Coll*

4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A COURT TO
 5 INFORM A DEFENDANT WHO IS BEING ARRAIGNED THAT IF HE IS NOT
 6 A CITIZEN OF THE UNITED STATES, A GUILTY PLEA MIGHT RESULT
 7 IN DEPORTATION FROM OR EXCLUSION FROM ADMISSION TO THE
 8 UNITED STATES OR DENIAL OF NATURALIZATION UNDER FEDERAL LAW;
 9 AND AMENDING SECTIONS 46-12-202 AND 46-12-204, MCA."

10
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 **Section 1.** Section 46-12-202, MCA, is amended to read:

13 "46-12-202. Court to advise defendant of his rights and
 14 the charges. (1) The defendant shall be advised by the court
 15 as follows:

- 16 (a) of the nature of the crime charged against him;
- 17 (b) of the punishment as set forth by statute for the
 18 crime charged;
- 19 (c) if the defendant intends to enter into a plea
 20 bargain agreement:
 - 21 (i) that under 46-12-204, the court is not bound by
 22 such agreements;
 - 23 (ii) that under 46-12-204, if the court does not impose
 24 the sentence recommended by the prosecution pursuant to a
 25 plea agreement, the court is not required to allow the

1 defendant to withdraw a plea of guilty;

2 (iii) that criminal sentencing is governed by Title 46,
 3 chapter 18; and

4 (iv) that the defendant and his counsel should carefully
 5 review Title 46, chapter 18, and consider the most severe
 6 sentence that can be imposed for a particular crime;

7 (d) if the defendant appears for arraignment without
 8 counsel, of his right to counsel and of his right to
 9 assigned counsel if he is unable to employ counsel. If
 10 counsel is or has been waived by the defendant, the court
 11 shall ascertain if the waiver is or was voluntary before
 12 proceeding.

13 (e) of the time prescribed by statute to enter a plea;

14 (f) of his right to secure bail to release him from
 15 custody; and

16 (g) that if the defendant is not a United States
 17 citizen, a guilty plea might result in deportation from or
 18 exclusion from admission to the United States or denial of
 19 naturalization under federal law.

20 (2) The court, or the clerk or county attorney under
 21 its direction, must:

- 22 (a) deliver to the defendant a true copy of the
 23 indictment, information, or complaint, including the
 24 endorsements thereon and the list of witnesses when
 25 required;



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1 (b) read the indictment, information, or complaint to
2 the defendant unless the defendant or his counsel waives
3 such reading; and

4 (c) ask him whether he pleads guilty or not guilty to
5 the indictment, information, or complaint."

6 **Section 2.** Section 46-12-204, MCA, is amended to read:

7 "46-12-204. The plea -- plea bargains. (1) The
8 defendant shall enter a plea of guilty or not guilty to the
9 indictment, information, or complaint. If the defendant
10 refuses to plead to the indictment, information, or
11 complaint, a plea of not guilty must be entered.

12 (2) The court may refuse to accept a plea of guilty and
13 shall not accept the plea of guilty without first
14 determining that the plea is voluntary with an understanding
15 of the charge.

16 (3) (a) A plea bargain agreement is an agreement
17 between a defendant and a prosecutor that in exchange for a
18 particular plea the prosecutor will recommend to the court a
19 particular sentence. A judge may not participate in the
20 making of, and is not bound by, a plea bargain agreement. If
21 a judge does not impose a sentence recommended by a
22 prosecutor pursuant to a plea bargain agreement, the judge
23 is not required to allow the defendant to withdraw a plea of
24 guilty.

25 (b) Before a judge accepts a plea of guilty, he must

1 advise the defendant:

2 (i) of all the provisions of subsection (3)(a);

3 (ii) of the punishment as set forth by statute for the
4 crime charged;

5 (iii) that prior to entering a plea of guilty, the
6 defendant and his counsel should have carefully reviewed
7 Title 46, chapter 18, and considered the most severe
8 sentence that can be imposed for a particular crime; and

9 (iv) that the judge may impose any sentence allowed by
10 law; and

11 (v) that if the defendant is not a United States
12 citizen, a guilty plea might result in deportation from or
13 exclusion from admission to the United States or denial of
14 naturalization under federal law."

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

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the charges. (1) The defendant shall be advised by the court
as follows:

- (a) of the nature of the crime charged against him;
- (b) of the punishment as set forth by statute for the
crime charged;
- (c) if the defendant intends to enter into a plea
bargain agreement:
 - (i) that under 46-12-204, the court is not bound by
such agreements;
 - (ii) that under 46-12-204, if the court does not impose
the sentence recommended by the prosecution pursuant to a

plea agreement, the court is not required to allow the
defendant to withdraw a plea of guilty;

(iii) that criminal sentencing is governed by Title 46,
chapter 18; and

(iv) that the defendant and his counsel should carefully
review Title 46, chapter 18, and consider the most severe
sentence that can be imposed for a particular crime;

(d) if the defendant appears for arraignment without
counsel, of his right to counsel and of his right to
assigned counsel if he is unable to employ counsel. If
counsel is or has been waived by the defendant, the court
shall ascertain if the waiver is or was voluntary before
proceeding.

(e) of the time prescribed by statute to enter a plea;

(f) of his right to secure bail to release him from
custody; and

(g) that if the defendant is not a United States
citizen, a guilty plea might result in deportation from or
exclusion from admission to the United States or denial of
naturalization under federal law.

(2) The court, or the clerk or county attorney under
its direction, must:

(a) deliver to the defendant a true copy of the
indictment, information, or complaint, including the
endorsements thereon and the list of witnesses when

SECOND READING



1 required;

2 (b) read the indictment, information, or complaint to
3 the defendant unless the defendant or his counsel waives
4 such reading; and

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6 the indictment, information, or complaint."

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12 complaint, a plea of not guilty must be entered.

13 (2) The court may refuse to accept a plea of guilty and
14 shall not accept the plea of guilty without first
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16 of the charge.

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5 crime charged;

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8 Title 46, chapter 18, and considered the most severe
9 sentence that can be imposed for a particular crime; and

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11 law; and

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13 citizen, a guilty plea might result in deportation from or
14 exclusion from admission to the United States or denial of
15 naturalization under federal law."

16 NEW SECTION. SECTION 3. COORDINATION INSTRUCTION. IF
17 SENATE BILL NO. 51 IS PASSED AND APPROVED AND IF IT INCLUDES
18 A SECTION THAT AMENDS 46-12-204, THEN [SECTION 2 OF THIS
19 ACT], AMENDING 46-12-204, IS VOID.

-End-

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18 citizen, a guilty plea might result in deportation from or
19 exclusion from admission to the United States or denial of
20 naturalization under federal law.21 (2) The court, or the clerk or county attorney under
22 its direction, must:23 (a) deliver to the defendant a true copy of the
24 indictment, information, or complaint, including the
25 endorsements thereon and the list of witnesses when

THIRD READING

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