

House Bill 5

In The House

January 6, 1981	Introduced and referred to Committee on Judiciary.
February 12, 1981	Committee recommend bill do pass as amended.
February 13, 1981	Bill printed and placed on members' desks.
February 14, 1981	Second reading do pass.
February 16, 1981	Correctly engrossed.
February 17, 1981	Third reading passed.

In The Senate

February 18, 1981	Introduced and referred to Committee on Judiciary.
March 24, 1981	Committee recommend bill do pass as amended.
March 27, 1981	Motion pass consideration.
March 28, 1981	Second reading indefinitely postponed.

In The House

March 28, 1981	Returned from Senate indefinitely postponed.
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1                    HOUSE    BILL NO. 5  
 2    INTRODUCED BY YARDLEY  
 3                    BY REQUEST OF THE COMMITTEE ON CORRECTIONS POLICY  
 4                    AND FACILITY NEEDS

5  
 6    A BILL FOR AN ACT ENTITLED:    "AN ACT TO PROVIDE A PLEA  
 7    AGREEMENT PROCEDURE."

8  
 9    BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10            Section 1. Plea agreement. (1) The prosecuting attorney  
 11    and the attorney for the defendant (or the defendant when  
 12    acting pro se) may engage in discussions to reach an  
 13    agreement that, upon entry of a plea of guilty to a charged  
 14    offense or to a lesser or related offense, the prosecuting  
 15    attorney shall:

- 16            (a) move for a dismissal of other charges;
- 17            (b) make a recommendation or refrain from opposing the  
 18    defendant's request for a specified sentence, with the  
 19    understanding that such a recommendation or request does not  
 20    bind the court; or
- 21            (c) agree that a specific sentence is the appropriate  
 22    disposition of the case.

23            (2) The court may not participate in the plea agreement  
 24    discussions.

25            Section 2. Hearing of agreement. If a plea agreement

1    has been reached by the parties, the court shall hear the  
 2    agreement upon arraignment. The agreement must be heard in  
 3    open court and entered, except that on a showing of good  
 4    cause, it may be heard in camera and off the record.  
 5    Thereupon, the court may accept or reject the agreement or  
 6    may defer its decision as to the acceptance or rejection  
 7    until there has been an opportunity to consider the  
 8    presentence report.

9            Section 3. Acceptance of a plea agreement. If the court  
 10    accepts the plea agreement, the court shall inform the  
 11    defendant that it will include in the judgment and the  
 12    sentence the disposition provided for in the plea agreement.

13            Section 4. Rejection of plea agreement. If the court  
 14    rejects the plea agreement, the court shall, on the record,  
 15    inform the parties of this fact. The court shall:

- 16            (a) advise the defendant in open court or, on a showing  
 17    of good cause, in camera, that the court is not bound by the  
 18    plea agreement;
- 19            (b) afford the defendant the opportunity to then  
 20    withdraw his plea; or

21            (c) advise the defendant that if he persists in his  
 22    guilty plea, the disposition of the case may be less  
 23    favorable to the defendant than that contemplated by the  
 24    plea agreement.

25            Section 5. Inadmissibility of pleas, offers of pleas,

1 and related statements -- exception. (1) Except as otherwise  
 2 provided in this section, evidence of any of the following  
 3 is not admissible in any civil or criminal proceedings  
 4 against the person who made the plea or offer:

- 5 (a) a plea of guilty, later withdrawn;  
 6 (b) an offer to plead guilty to the crime charged or  
 7 any other crime; or  
 8 (c) statements made in connection with and relevant to  
 9 any of the pleas or offers.

10 (2) Evidence of a statement made in connection with and  
 11 relevant to either of the following is admissible in a  
 12 criminal proceeding for perjury or false swearing if the  
 13 statement was made by the defendant under oath, on the  
 14 record, and in the presence of counsel:

- 15 (a) a plea of guilty, later withdrawn; or  
 16 (b) an offer to plead guilty to the crime charged or  
 17 any other crime.

18 Section 6. Determining accuracy of plea.  
 19 Notwithstanding the acceptance of a plea of guilty, the  
 20 court may not enter a judgment upon such plea without making  
 21 such inquiry as shall satisfy it that there is a factual  
 22 basis for the plea.

23 Section 7. Record of proceedings. A verbatim record of  
 24 the proceedings at which the defendant enters a plea shall  
 25 be made and, if there is a plea of guilty, the record shall

1 include, without limitation, the court's advice to the  
 2 defendant, the inquiry into the voluntariness of the plea  
 3 including any plea agreement, and the inquiry into the  
 4 accuracy of a guilty plea.

5 Section 8. Codification. Sections 1 through 7 are  
 6 intended to be codified as an integral part of Title 46,  
 7 chapter 12, and the provisions of Title 46, chapter 12,  
 8 apply to sections 1 through 7.

-End-

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on Judiciary

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18 defendant's request for a specified sentence, with the  
19 understanding that such a recommendation or request does not  
20 bind the court; or
- 21 (c) agree that a specific sentence is the appropriate  
22 disposition of the case.

23 (2) ANY AGREEMENT REACHED SHALL BE REDUCED TO WRITING  
24 AND A COPY GIVEN TO THE DEFENDANT.

25 ~~(2)(1)~~ The court may not participate in the plea

1 agreement discussions.

2 SECTION 2. NOTICE TO COURT OF PLEA AGREEMENT. EXCEPT  
3 FOR GOOD CAUSE SHOWN, NOTIFICATION TO THE COURT OF THE  
4 EXISTENCE OF A PLEA AGREEMENT SHALL BE GIVEN AT THE  
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16 the presentence report.

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18 court accepts the plea agreement, the court shall inform the  
19 defendant that it will include in the judgment and the  
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1 bound by the plea agreement;

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13 Section 9. Codification. Sections 1 through 7 8 are  
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March 24, 1981

SENATE STANDING COMMITTEE REPORT  
(Judiciary)

That House Bill No. 5 be amended as follows:

1. Page 1, line 20.

Following: ";"

Strike: "or"

2. Page 1, line 22.

Following: "case"

Insert: "; or

(d) make a recommendation or refrain from opposing the defendant's request for immunity from prosecution in exchange for the defendant's testimony"

3. Page 1, line 23.

Following: "(2)"

Insert: "IN THE DISTRICT COURT"

4. Page 2, line 5.

Following: "TO"

Strike: "TRIAL"

Insert: "VERDICT"

5. Page 4, line 6.

Following: "proceedings."

Strike: "A"

Insert: "In the district court a"