

HOUSE BILL NO. 700
INTRODUCED BY MERCER

IN THE HOUSE

February 7, 1985	Introduced and referred to Committee on Judiciary.
February 18, 1985	Committee recommend bill do pass as amended. Report adopted. Bill printed and placed on members' desks.
February 20, 1985	Second reading, do pass. Considered correctly engrossed.
February 21, 1985	Third reading, passed. Transmitted to Senate.

IN THE SENATE

February 22, 1985	Introduced and referred to Committee on Judiciary.
March 28, 1985	Committee recommend bill be concurrent in as amended. Report adopted.
March 30, 1985	Second reading, concurred in.
April 1, 1985	Third reading, concurred in. Ayes, 41; Noes, 7. Returned to House with amendments.

IN THE HOUSE

April 2, 1985	Received from Senate.
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April 8, 1985

Second reading, amendments
concurred in.

On motion, rules suspended and
bill placed on third reading this
day.

Third reading, amendments
concurred in.

Sent to enrolling.

Reported correctly enrolled.

1 House BILL NO. 700
2 INTRODUCED BY Mercer
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING PLEA BARGAIN
5 AGREEMENTS; REQUIRING GOOD CAUSE TO BE SHOWN BEFORE A FELONY
6 CHARGE IS DISMISSED; AMENDING SECTIONS 46-12-204 AND
7 46-13-201, MCA."
8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
10 Section 1. Section 46-12-204, MCA, is amended to read:
11 "46-12-204. The plea -- plea bargains. (1) The
12 defendant shall enter a plea of guilty or not guilty to the
13 indictment, information, or complaint. If the defendant
14 refuses to plead to the indictment, information, or
15 complaint, a plea of not guilty must be entered.
16 (2) The court may refuse to accept a plea of guilty
17 and shall not accept the plea of guilty without first
18 determining that the plea is voluntary with an understanding
19 of the charge.
20 (3) (a) A plea bargain agreement between a defendant
21 and a prosecutor is an agreement that in exchange for a
22 particular plea the prosecutor will recommend to the court a
23 particular sentence. A judge may not participate in the
24 making of, and is not bound by, a plea bargain agreement. If
25 a judge does not impose a sentence recommended by a

1 prosecutor pursuant to a plea bargain agreement, the judge
2 is not required to allow the defendant to withdraw a plea of
3 guilty.
4 (b) Before a judge accepts a plea of guilty, he must
5 advise the defendant of all the provisions of subsection
6 (3)(a) and that he may impose any sentence allowed by law."
7 Section 2. Section 46-13-201, MCA, is amended to read:
8 "46-13-201. Dismissal at instance of court or
9 prosecution. (1) The court may, either on its own motion or
10 upon the application of the attorney prosecuting and in
11 furtherance of justice, order ~~an~~ action, a complaint,
12 information, or indictment to be dismissed; however, the
13 court may not order a dismissal of a complaint, information,
14 or indictment, or a count contained therein, charging a
15 felony, unless good cause for dismissal is shown--The and
16 the reasons of for the dismissal must be are set forth in an
17 order entered upon the minutes. A plea bargain agreement is
18 not by itself good cause for a dismissal.
19 (2) The court, unless good cause to the contrary is
20 shown, must order the prosecution to be dismissed if a
21 defendant whose trial has not been postponed upon his
22 application is not brought to trial within 6 months after
23 entry of plea upon a complaint, information, or indictment
24 charging a misdemeanor.
25 (3) An order for the dismissal of an action as

LC 1208/01

1 provided in this chapter is a bar to any other prosecution
2 for the same offense if it is a misdemeanor, but it is not a
3 bar if the offense is a felony."

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 700

INTRODUCED BY MERCER

A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING PLEA BARGAIN AGREEMENTS; REQUIRING GOOD CAUSE TO BE SHOWN BEFORE A FELONY CHARGE IS DISMISSED; AMENDING SECTIONS 46-12-204 AND 46-13-201, MCA."

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

Section 1. Section 46-12-204, MCA, is amended to read:

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

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

(3) (a) A plea bargain agreement IS AN AGREEMENT between a defendant and a prosecutor is-an-agreement that in exchange for a particular plea the prosecutor will recommend to the court a particular sentence. A judge may not participate in the making of, and is not bound by, a plea bargain agreement. If a judge does not impose a sentence

recommended by a prosecutor pursuant to a plea bargain agreement, the judge is not required to allow the defendant to withdraw a plea of guilty.

(b) Before a judge accepts a plea of guilty, he must advise the defendant of all the provisions of subsection (3)(a) and that he may impose any sentence allowed by law."

Section 2. Section 46-13-201, MCA, is amended to read:

"46-13-201. Dismissal at instance of court or prosecution. (1) The court may, either on its own motion or upon the application of the attorney prosecuting and in furtherance of justice, order ~~an action~~ a complaint, information, or indictment to be dismissed; however, the court may not order a dismissal of a complaint, information, or indictment, or a count contained therein, charging a felony, unless good cause for dismissal is shown.~~--The and the reasons of for the dismissal must be are set forth in an order entered upon the minutes. A plea-bargain-agreement-is not-by-itself-good-cause-for-a-dismissal.~~

(2) The court, unless good cause to the contrary is shown, must order the prosecution to be dismissed if a defendant whose trial has not been postponed upon his application is not brought to trial within 6 months after entry of plea upon a complaint, information, or indictment charging a misdemeanor.

(3) An order for the dismissal of an action as

HB 0700/02

1 provided in this chapter is a bar to any other prosecution
2 for the same offense if it is a misdemeanor, but it is not a
3 bar if the offense is a felony."

-End-

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A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING PLEA BARGAIN AGREEMENTS; REQUIRING GOOD CAUSE TO BE SHOWN BEFORE A FELONY CHARGE IS DISMISSED; AMENDING SECTIONS 46-12-204 AND 46-13-201, MCA."

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

Section 1. Section 46-12-204, MCA, is amended to read:

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

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

(3) (a) A plea bargain agreement IS AN AGREEMENT between a defendant and a prosecutor is-an-agreement that in exchange for a particular plea the prosecutor will recommend to the court a particular sentence. A judge may not participate in the making of, and is not bound by, a plea bargain agreement. If a judge does not impose a sentence

recommended by a prosecutor pursuant to a plea bargain agreement, the judge is not required to allow the defendant to withdraw a plea of guilty.

(b) Before a judge accepts a plea of guilty, he must advise the defendant of all the provisions of subsection (3)(a) and that he may impose any sentence allowed by law."

Section 2. Section 46-13-201, MCA, is amended to read:

"46-13-201. Dismissal at instance of court or prosecution. (1) The court may, either on its own motion or upon the application of the attorney prosecuting and in furtherance of justice, order ~~an--action;~~ a complaint, information, or indictment to be dismissed; however, the court may not order a dismissal of a complaint, information, or indictment, or a count contained therein, charging a felony, unless good cause for dismissal is shown--The and the reasons of for the dismissal must-be are set forth in an order entered upon the minutes. A-plea-bargain-agreement-is not-by-itself-good-cause-for-a-dismissal-

(2) The court, unless good cause to the contrary is shown, must order the prosecution to be dismissed if a defendant whose trial has not been postponed upon his application is not brought to trial within 6 months after entry of plea upon a complaint, information, or indictment charging a misdemeanor.

(3) An order for the dismissal of an action as

1 provided in this chapter is a bar to any other prosecution
2 for the same offense if it is a misdemeanor, but it is not a
3 bar if the offense is a felony."

-End-

SENATE

STANDING COMMITTEE REPORT

March 28 19 85

Page 1 of 3
MR. PRESIDENT

We, your committee on.....JUDICIARY.....
having had under consideration.....HOUSE BILL.....No. 700
third reading copy (blue color)
(Senator Pinsoneault)

REGULATE PLEA BARGAINS; REQUIRE GOOD CAUSE BE SHOWN FOR DISMISSAL

Respectfully report as follows: That.....HOUSE BILL.....No. 700

be amended as follows:

1. Title, line 6.
Following: "SECTIONS"
Insert: "46-12-202,"
Following: "46-12-204"
Insert: ","

2. Page 1, line 10.
Following: line 9
Insert: "Section 1. Section 46-12-202, MCA, is amended to read:

"46-12-202. Court to advise defendant of his rights and 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;

RRP000X

RRP000000

CONTINUED

Chairman.

Page 2 of 3

HOUSE BILL NO. 700

March 28 19 85

(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;

(a) (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.

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

(e) (f) of his right to secure bail to release him from custody.

(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 required;

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

(c) ask him whether he pleads guilty or not guilty to the indictment, information, or complaint."
Renumber: subsequent sections

3. Page 2, line 5.
Following: "defendant"
Insert: ": (i)"

CONTINUED

March 28 19 85

Page 3 of 3

HOUSE BILL NO. 700

4. Page 2, line 6.

Following: "(3) (a)"

Insert: "; (ii) of the punishment as set forth by statute for the crime charged;

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

Following: "and"

Insert: "(iv)"

Following: "that"

Strike: "he"

Insert: "the judge"

KB
AND AS AMENDED

BE CONCURRED IN -


Senator Joe Mazurek, Chairman

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6 CHARGE IS DISMISSED; AMENDING SECTIONS 46-12-202, 46-12-204,
7 AND 46-13-201, MCA."
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9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 SECTION 1. SECTION 46-12-202, MCA, IS AMENDED TO READ:

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

14 (a) of the nature of the crime charged against him;

15 (b) of the punishment as set forth by statute for the
16 crime charged;

17 (c) if the defendant intends to enter into a plea
18 bargain agreement:

19 (i) that under 46-12-204, the court is not bound by
20 such agreements;

21 (ii) that under 46-12-204, if the court does not impose
22 the sentence recommended by the prosecution pursuant to a
23 plea agreement, the court is not required to allow the
24 defendant to withdraw a plea of guilty;

25 (iii) that criminal sentencing is governed by Title 46,

1 chapter 18; and

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

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

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

13 (e)(f) of his right to secure bail to release him from
14 custody.

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

17 (a) deliver to the defendant a true copy of the
18 indictment, information, or complaint, including the
19 endorsements thereon and the list of witnesses when
20 required;

21 (b) read the indictment, information, or complaint to
22 the defendant unless the defendant or his counsel waives
23 such reading; and

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

REFERENCE BILL

HB 700

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

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

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

(3) (a) A plea bargain agreement IS AN AGREEMENT between a defendant and a prosecutor is-an-agreement that in exchange for a particular plea the prosecutor will recommend to the court a particular sentence. A judge may not participate in the making of, and is not bound by, a plea bargain agreement. If a judge does not impose a sentence recommended by a prosecutor pursuant to a plea bargain agreement, the judge is not required to allow the defendant to withdraw a plea of guilty.

(b) Before a judge accepts a plea of guilty, he must advise the defendant:

(I) of all the provisions of subsection (3)(a);

(II) OF THE PUNISHMENT AS SET FORTH BY STATUTE FOR THE CRIME CHARGED;

(III) THAT PRIOR TO ENTERING A PLEA OF GUILTY, THE

DEFENDANT AND HIS COUNSEL SHOULD HAVE CAREFULLY REVIEWED TITLE 46, CHAPTER 18, AND CONSIDERED THE MOST SEVERE SENTENCE THAT CAN BE IMPOSED FOR A PARTICULAR CRIME; and

(IV) that he THE JUDGE may impose any sentence allowed by law."

Section 3. Section 46-13-201, MCA, is amended to read:

"46-13-201. Dismissal at instance of court or prosecution. (1) The court may, either on its own motion or upon the application of the attorney prosecuting and in furtherance of justice, order ~~an--action;~~ a complaint, information, or indictment to be dismissed; however, the court may not order a dismissal of a complaint, information, or indictment, or a count contained therein, charging a felon, unless good cause for dismissal is shown--~~The and the reasons of for the dismissal must-be are~~ set forth in an order entered upon the minutes. ~~A-plea-bargain-agreement--is not-by-itself-good-cause-for-a-dismissal;~~

(2) The court, unless good cause to the contrary is shown, must order the prosecution to be dismissed if a defendant whose trial has not been postponed upon his application is not brought to trial within 6 months after entry of plea upon a complaint, information, or indictment charging a misdemeanor.

(3) An order for the dismissal of an action as provided in this chapter is a bar to any other prosecution

HB 0700/03

- 1 for the same offense if it is a misdemeanor, but it is not a
- 2 bar if the offense is a felony."

-End-