

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 concurred 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.

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.

HOUSE BILL NO. 700

**INTRODUCED BY**

House  
Mercury

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."

2  
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.

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.

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.

25 (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-

APPROVED BY COMMITTEE  
ON JUDICIARY

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

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

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13 indictment, information, or complaint. If the defendant  
14 refuses to plead to the indictment, information, or  
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16 (2) The court may refuse to accept a plea of guilty  
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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.

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



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19 of the charge.

1 recommended by a prosecutor pursuant to a plea bargain  
2 agreement, the judge is not required to allow the defendant  
3 to withdraw a plea of 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:

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



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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**

Page 1 of 3  
MR. PRESIDENT

We, your committee on JUDICIARY,  
having had under consideration HOUSE BILL No. 700  
third reading copy in 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;

REPOSS  
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CONTINUED

Chairman.

March 28 1985

March 28 1985

Page 2 of 3

HOUSE BILL NO. 700

(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;

(e) (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 1985

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"

AND AS AMENDED

BE CONCURRED IN -

  
Senator Joe Mazurek, Chairman

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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

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

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14 custody.

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

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18 indictment, information, or complaint, including the  
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20 required;

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

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

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

22       (I) of all the provisions of subsection (3)(a);  
 23       (II) OF THE PUNISHMENT AS SET FORTH BY STATUTE FOR THE  
 24 CRIME CHARGED;  
 25       (III) THAT PRIOR TO ENTERING A PLEA OF GUILTY, THE

1       DEFENDANT AND HIS COUNSEL SHOULD HAVE CAREFULLY REVIEWED  
 2 TITLE 46, CHAPTER 18, AND CONSIDERED THE MOST SEVERE  
 3 SENTENCE THAT CAN BE IMPOSED FOR A PARTICULAR CRIME; and  
 4 (IV) that he THE JUDGE may impose any sentence allowed  
 5 by law."

6       Section 3. Section 46-13-201, MCA, is amended to read:  
 7       "46-13-201. Dismissal at instance of court or  
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-End-