

FIFTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
FIRST REGULAR SESSION)



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SENATE

S. B. No. 2871

RECEIVED BY: 

Introduced by **Senator TEOFISTO "TG" L. GUINGONA III**

EXPLANATORY NOTE

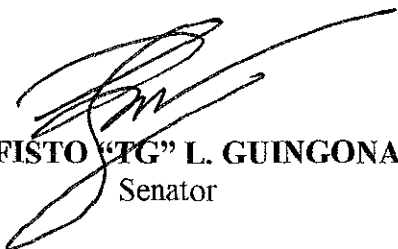
Sec. 2. Plea of guilty to a lesser offense. – At arraignment, the accused, with the consent of the offended party and prosecutor, may be allowed by the trial court to plead guilty to a lesser offense which is necessarily included in the offense charged. After arraignment but before trial, the accused may still be allowed to plead guilty to said lesser offense after withdrawing his plea of not guilty. No amendment of the complaint or information is necessary.

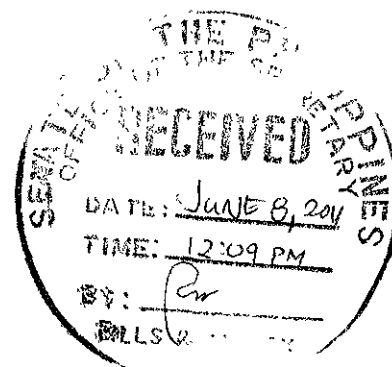
- *Sec. 2, Rule 116, Rules of Court*

Plea bargaining in criminal cases is a process whereby the accused and the prosecution work out a mutually satisfactory disposition of the case, subject to court approval (*Daan vs. Sandiganbayan*, G.R. Nos. 163972-77, March 28, 2008). While plea bargaining is a procedural rule under the law, its purpose, application and implementation should not be exercised in a capricious, whimsical or arbitrary fashion. Instead, a plea bargaining agreement should ultimately redound to the benefit of the public.

This bill aims to ensure that plea bargaining will not be exploited as a procedure of compromise for the convenience of the accused, but will be used for the paramount public interest of justice.

In view of the foregoing, the immediate enactment of this measure is earnestly sought.


TEOFISTO "TG" L. GUINGONA III
Senator



SENATE

S. B. No. 2871

Introduced by **Senator TEOFISTO "TG" GUINGONA III**

AN ACT
PROVIDING FOR RULES ON PLEA BARGAINING AGREEMENT IN CRIMINAL
CASES, PROVIDING PENALTIES IN VIOLATION THEREFOR, AND FOR OTHER
PURPOSES

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

1 **SECTION 1. *Short Title.*** - This Act shall be known as the "Plea Bargaining Act of 2011."
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3

4 **SECTION 2. *Plea Bargaining.*** - Plea Bargaining is the process in criminal proceedings
5 whereby the accused and the prosecution work out a mutually satisfactory disposition of the
6 case, as expressed and contained in the plea bargaining agreement, and subject to court approval,
7 including the plea of the accused to a lesser offense than that charged in the complaint or
8 information, or to only one or some of the counts of a multi-count indictment, and in conformity
9 with other conditions imposed by the prosecution, in return for a lighter sentence than that for the
10 graver charge.
11

12
13 **SECTION 3. *Principles.*** - Plea bargaining shall be entered into by and between the prosecution
14 and the accused, and approved by the court, in accordance with the following principles:
15

- 16 a. Plea bargaining is a matter imbued with public interest. As such, its initial
17 consideration and final terms should both primarily redound to the benefit of the
18 public.
19
20
21 b. When a plea bargain is offered by the accused, or a plea bargaining agreement is
22 entered into, the prosecution and the court are both duty bound to inquire
23 carefully into the circumstances and motivations on which these are premised, to
24 the end that the interest of justice and of the public will be served.
25
26
27 c. Plea bargaining is not a matter of compromise for the convenience and benefit of
28 the accused. It is not demandable by the accused as a matter of right but is
29 addressed to the sound discretion of the trial court.
30
31 d. Plea bargaining shall not be entered into when it will only serve to trivialize the
32 seriousness of the offense charged against the accused and negate the deterrent
33 value of the law intended to proscribe the offense committed.
34
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1 **SECTION 4. *Plea of guilty to a lesser offense.*** – As part of a plea bargaining agreement, the
2 accused, with the consent of the offended party and the prosecutor, may be allowed by the trial
3 court to plead guilty to a lesser offense which is necessarily included in the offense charged.

4 For purposes of plea bargaining, a lesser offense which is necessarily included in the offense
5 charged is one that has some of the essential elements of the original offense charged. The lesser
6 offense shall also belong to the same classification or title under the Revised Penal Code or the
7 relevant special laws as the offense charged in the original information.
8

9 In all cases, the penalty for the lesser offense to which the accused may be allowed to plead
10 guilty shall not be more than two (2) degrees lower than the imposable penalty for the offense
11 charged, notwithstanding the presence of mitigating circumstances.
12

13
14 **SECTION 5. *Consent of the Offended Party.*** – In offenses charged where there is no private
15 offended party, the offended party whose consent is necessary for the plea bargaining shall be a)
16 the People of the Philippines, as represented by the prosecution; and b) the government agency
17 responsible for the enforcement of the law violated or directly affected by the offense committed,
18 as represented by its highest ranking official, such as its president, chief executive, or head.
19

20
21 **SECTION 6. *Additional Parties in certain cases.*** – In cases of plunder and money laundering,
22 the consent of the Ombudsman and the President are required.
23

24
25 **SECTION 7. *Time of Availment.*** – At arraignment, the accused, with the consent of the
26 offended party, the prosecutor, and any additional party required by law to give its consent, may
27 be allowed to plead guilty to a lesser offense which is necessarily included in the offense
28 charged.
29

30 During the course of trial, the period after arraignment- during or after the presentation of the
31 evidence of the prosecution, but before the presentation of the evidence of the defense, and in no
32 case after the dismissal by the court of a demurrer to evidence- the accused may still be allowed
33 to plead guilty to a lesser offense after withdrawing a plea of guilty to the original offense
34 charged. No amendment of the complaint or information is necessary. Plea bargaining at this
35 stage shall be subject to the conditions provided in Section 8 of this Act.
36

37
38 **SECTION 8. *Plea Bargaining during the course of the trial; Conditions.*** – The prosecution
39 may enter into plea bargaining with the accused, with the consent of the offended party under
40 Section 7, during or after the presentation of the evidence of the prosecution, but before the
41 presentation of the evidence of the defense, and in no case after the dismissal by the court of a
42 demurrer to evidence, provided that all of the following conditions are present:
43

- 44 a. The evidence of the prosecution is insufficient to prove the offense charged
45 beyond reasonable doubt;
46
- 47 b. In cases involving the recovery by or restitution to the offended party of property
48 in crimes against property and those committed by public officers in relation to
49 public funds such as, but not limited to, the crime of plunder, graft and corrupt
50 practices, bribery, and malversation, the accused makes a full restitution of the
51 property or public funds involved; and
52
- 53 c. In cases of conspiracy and when the accused has not yet qualified as a state
54 witness in accordance with the Rules of Criminal Procedure, the accused fully
55 cooperates by providing, among others, documentary, object, and testimonial
56 evidence, against the principals conspirators responsible for the commission of
57 the offense charged and who are most guilty.
58
59

1 **SECTION 9. Procedure.** – For purposes of plea bargaining, the following procedure shall be
2 followed:

- 3
- 4 a. The intention to plead guilty to a lesser offense must be manifested by the accused
5 before the court. Immediately thereafter, the prosecutor shall move for the
6 suspension of the proceedings to enable him to confer with the offended party, to
7 evaluate the implications of the offer to plead to a lesser offense and secure the
8 consent of the offended party
- 9 b. If the penalty imposable for the offense charged is *prision mayor*, or six years and
10 one day imprisonment, or higher, or a fine exceeding twelve thousand pesos (PhP
11 12, 000.00), the plea bargaining agreement shall first be approved in writing by
12 the City Prosecutor, Provincial Prosecutor, or the Prosecutor General in criminal
13 cases handled by the National Prosecution Service; or the Ombudsman in criminal
14 cases handled by the Office of the Special Prosecutor; or the head of the agency in
15 the case of other agencies authorized to prosecute criminal cases, before it is
16 submitted to the court for approval. In no case shall the subject plea bargaining
17 agreement be allowed without the written approval of the above approving
18 authorities.
- 19
- 20 c. The prosecution and the accused shall file a joint motion for the approval of the
21 plea bargaining agreement. Attached to the joint motion is the plea bargaining
22 agreement itself. In no case shall the accused be re-arraigned and plead guilty to a
23 lesser offense other than that agreed upon and without the requisite court approval
24 of the plea bargaining agreement shall render the plea null and void ab initio.
- 25
- 26 d. The prosecution may dispense with the presentation of evidence unless the court
27 directs it to do so for purposes of determining the penalty to be imposed.
- 28
- 29

30 **SECTION 10. Penalty.** – For violations of this Act, the penalty of imprisonment ranging from
31 six months and one day to six years, and a fine ranging from six thousand (PhP 6,000.00) to sixty
32 thousand peso28s (PhP 60,000.00) shall be imposed.

33

34

35 **SECTION 11. Repeal of Inconsistent Laws.** – All laws, decrees, orders, rules and regulations,
36 and other issuances or parts thereof which are inconsistent with or contrary to this Act, are
37 hereby repealed, amended, or modified accordingly. Existing laws disallowing plea bargaining
38 for certain offenses and crimes shall remain in force and effect.

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41 **SECTION 12. Separability of Provisions.** – If any provision of this Act is declared invalid or
42 unconstitutional, the provisions thereof not affected by such declaration shall remain valid and in
43 force and effect.

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46 **SECTION 13. Effectivity.** – This Act shall take effect fifteen (15) days after complete
47 publication in two (2) newspapers of national and general circulation.

Approved,