



Ohio Legislative Service Commission

Bill Analysis

Dennis M. Papp

S.B. 263

131st General Assembly
(As Introduced)

Sens. Hughes, Seitz

BILL SUMMARY

- Requires that the underlying agreement upon which is based a negotiated plea of guilty or no contest offered in a felony or first degree misdemeanor case be stated on the record in open court.
- Authorizes a court, upon request of the prosecution, to cancel a negotiated plea in a felony or first degree misdemeanor case if the offender does not provide information, cooperate with law enforcement, or perform another function or activity when required as a condition of the underlying agreement.

CONTENT AND OPERATION

Statement of plea bargain agreement on record

The bill specifies that when, in a felony case, a negotiated plea of guilty or no contest to one or more offenses charged or to one or more other or lesser offenses is offered, or when, in any case, a negotiated plea of guilty or no contest to one or more first degree misdemeanors is offered, the underlying agreement upon which the plea is based must be stated on the record in open court.¹

Currently, under the Criminal Rules, when a negotiated plea of guilty or no contest to one or more offenses charged in a felony case or to one or more other or lesser offenses is offered in a felony case, the underlying agreement upon which the plea is based must be stated on the record in open court.²

¹ R.C. 2929.45(A).

² Criminal Rule 11(F), not in the bill.

Effect of negotiated plea, retention of jurisdiction, and cancellation of plea agreement

Under the bill, if a court accepts a negotiated plea of guilty or no contest to an offense in a felony case or to a first degree misdemeanor, and if the underlying agreement upon which the plea is based obligates the offender to provide specified information, provide testimony of a specified nature or against a specified person, engage in specified conduct, cooperate with law enforcement authorities in a specified manner, or perform any other specified function or activity as a condition of the agreement (hereafter, "the offender's plea-bargained obligations"), all of the following apply:³

(1) The offender's plea of guilty or no contest serves as a waiver of the defendant's (offender's) right to a speedy trial with respect to the charge of that offense or charges of any other offense as described in (3)(b), below, if proceedings against the offender related to the particular charge are required to proceed under authority of (3), below.

(2) Until the offender has fulfilled the offender's plea-bargained obligations, the requirements imposed upon the state or the prosecution in the underlying agreement are not final and the court retains jurisdiction to consider any motion filed as described in (3), below. The court also retains jurisdiction, upon the filing of such a motion and the making of a determination of noncompliance as described in (3), below, and notwithstanding Criminal Rule 32 and R.C. 2505.02 (see "**Background**"), to vacate the offender's guilty or no contest plea to that offense and any sentence imposed for that offense and to proceed with the charges against the offender as described in (3), below.

(3) If the offender does not fulfill the offender's plea-bargained obligations, the prosecutor in the case in which the negotiated plea was accepted may file a motion with the court notifying the court that the offender has not fulfilled those obligations and requesting the court to cancel the plea agreement. If the prosecutor files such a motion, the court must determine whether the offender has or has not fulfilled the obligations. If the court determines that the offender has fulfilled them, it must deny the motion. If the court determines that the offender has not fulfilled them, its must enter a determination of noncompliance and grant the motion, and both of the following apply:

(a) The court must vacate the offender's plea of guilty or no contest to the subject offense and any sentence imposed upon the offender for that offense, and the proceedings against the offender related to the charge of the subject offense must proceed as if the offender had not entered the plea of guilty or no contest.

³ R.C. 2929.45(B).

(b) If the prosecutor dismissed one or more charges against the offender pursuant to the underlying agreement in anticipation of the offender fulfilling the offender's plea-bargained obligations, the prosecutor may request the court to reinstate all or some of the charges that were dismissed. If the prosecutor requests the reinstatement, the court must reinstate the charges included in the prosecutor's request and the proceedings against the offender related to those charges must proceed as if they had not been dismissed.

Intent of General Assembly

The General Assembly declares in the bill that its intent in enacting the bill's provisions is to supersede the 2014 holding of the Ohio Supreme Court in *State v. Gilbert*,⁴ so that a court has jurisdiction to consider the prosecution's motion to vacate, and may vacate, an offender's guilty or no contest plea and sentence based upon the offender's violation of a negotiated plea agreement that is the basis of the plea and sentence.⁵ In *State v. Gilbert*, the Court held that:

Based upon the foregoing analysis, we hold that once a defendant has been sentenced by a trial court, that court does not have jurisdiction to entertain a motion by the state to vacate the defendant's guilty plea and sentence based upon the defendant's alleged violation of a plea agreement. If the trial court is concerned with the defendant abiding by the terms of the plea agreement, the solution is to postpone sentencing until after the defendant has performed the desired act. As every teacher knows, you reward the student after the desired behavior occurs, not before. Much like teaching, plea negotiations are driven by the fact that the incentive to do the act in question disappears once the reward has been given.

Background

Criminal Rule 32 governs the imposition of sentence in a criminal case, the giving of notice to the defendant of a right to appeal the judgment of conviction or sentence if available, and the content and entry of a judgment of conviction.⁶ R.C. 2505.02 specifies

⁴ 143 Ohio St.3d 150 (2014).

⁵ Section 2.

⁶ Criminal Rule 32, not in the bill.



when a court order is a "final order" that may be reviewed, affirmed, modified, or reversed, with or without retrial.⁷

HISTORY

ACTION	DATE
Introduced	01-25-16

S0263-I-131.docx/emr

⁷ R.C. 2505.02, not in the bill.

