

As Introduced

**131st General Assembly
Regular Session
2015-2016**

S. B. No. 263

**Senator Hughes
Cosponsor: Senator Seitz**

A BILL

To enact section 2929.45 of the Revised Code to
authorize 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.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 2929.45 of the Revised Code be
enacted to read as follows:

Sec. 2929.45. (A) 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 misdemeanors of the first degree is offered, the underlying
agreement upon which the plea is based shall be stated on the
record in open court.

(B) If the court accepts a negotiated plea of guilty or no

contest to an offense of a type described in division (A) of 19
this section, and if the underlying agreement upon which the 20
plea is based obligates the offender to provide specified 21
information, provide testimony of a specified nature or against 22
a specified person, engage in specified conduct, cooperate with 23
law enforcement authorities in a specified manner, or perform 24
any other specified function or activity as a condition of the 25
agreement, all of the following apply: 26

(1) The offender's plea of guilty or no contest shall 27
serve as a waiver of the defendant's right to a speedy trial 28
with respect to the charge of that offense or charges of any 29
other offense as described in division (B)(3)(b) of this 30
section, if proceedings against the offender related to the 31
particular charge are required to proceed under authority of 32
division (B)(3) of this section. 33

(2) Until the offender has fulfilled the obligations as 34
described in division (B) of this section that were imposed upon 35
the offender in the underlying agreement, all of the following 36
apply: 37

(a) The requirements imposed upon the state or the 38
prosecution in the underlying agreement are not final; 39

(b) The court retains jurisdiction to consider any motion 40
filed as described in division (B)(3) of this section and, upon 41
the filing of such a motion and the making of a determination of 42
noncompliance as described in that division, and notwithstanding 43
Criminal Rule 32 and section 2505.02 of the Revised Code, to 44
vacate the offender's plea of guilty or no contest to that 45
offense and any sentence imposed upon the offender for that 46
offense and to proceed with the charges against the offender as 47
described in division (B)(3) of this section. 48

(3) If the offender does not fulfill the obligations as 49
described in division (B) of this section that were imposed upon 50
the offender in the underlying agreement, the prosecutor in the 51
case in which the negotiated plea was accepted may file a motion 52
with the court notifying the court that the offender has not 53
fulfilled those obligations and requesting the court to cancel 54
the plea agreement. If the prosecutor files such a motion, the 55
court shall determine whether the offender has or has not 56
fulfilled those obligations. If the court determines that the 57
offender has fulfilled those obligations, the court shall deny 58
the motion. If the court determines that the offender has not 59
fulfilled those obligations, the court shall enter a 60
determination of noncompliance and grant the motion, and both of 61
the following apply: 62

(a) The court shall vacate the offender's plea of guilty 63
or no contest to that offense and any sentence imposed upon the 64
offender for that offense, and the proceedings against the 65
offender related to the charge of that offense shall proceed as 66
if the offender had not entered the plea of guilty or no 67
contest. 68

(b) If the prosecutor dismissed one or more charges 69
against the offender pursuant to the underlying agreement in 70
anticipation of the offender fulfilling the obligations as 71
described in division (B) of this section that were imposed upon 72
the offender in the underlying agreement, the prosecutor may 73
request the court to reinstate all or some of the charges that 74
were dismissed. If the prosecutor requests the reinstatement, 75
the court shall reinstate the charges included in the 76
prosecutor's request and the proceedings against the offender 77
related to those charges shall proceed as if they had not been 78
dismissed. 79

Section 2. The General Assembly hereby declares that its 80
intent in enacting section 2929.45 of the Revised Code in this 81
act is to supersede the holding of the Ohio Supreme Court in 82
State v. Gilbert, 143 Ohio St. 3d 150 (2014), so that a court 83
has jurisdiction to consider the prosecution's motion to vacate, 84
and may vacate, an offender's guilty or no contest plea and 85
sentence based upon the offender's violation of a negotiated 86
plea agreement that is the basis of the plea and sentence. 87