

Regular Session, 2013

HOUSE BILL NO. 154

BY REPRESENTATIVES SMITH AND WESLEY BISHOP

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CRIMINAL/SENTENCING: Provides penalties relative to persons aiding and abetting in the commission of a crime and provides for the procedure by which an aider and abettor may be resentenced

1 AN ACT

2 To amend and reenact R.S. 14:23, 24, and 25 and Code of Criminal Procedure Article
3 881.1(A)(1) and (2) and to enact R.S. 14:24.1 and 27.1 and Code of Criminal
4 Procedure Article 881.1(A)(5), relative to parties to a crime; to add "aider and
5 abettor" to the list of possible parties to a crime; to provide for definitions; to provide
6 for penalties for aiding and abetting in the commission of a crime; to provide for the
7 procedure by which an aider and abettor may be resentenced; and to provide for
8 related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 14:23, 24, and 25 are hereby amended and reenacted and R.S.
11 14:24.1 and 27.1 are hereby enacted to read as follows:

12 §23. Parties classified

13 The parties to crimes are classified as any of the following:

14 (1) ~~Principals~~; and Principal.

15 (2) Aider and abettor.

16 (2) ~~Accessories~~ (3) Accessory after the fact.

17 §24. ~~Principals~~ Principal

18 ~~All persons~~ A principal is any person concerned in the commission of a
19 crime, whether present or absent, ~~and whether they directly commit the act~~ who

1 (1)(a) If the offense is punishable by death or life imprisonment, the aider
2 and abettor shall be imprisoned at hard labor for not less than ten nor more than fifty
3 years.

4 (b) If the offense is punishable by death or life imprisonment and is against
5 an individual who is a peace officer engaged in the performance of his lawful duty,
6 the aider and abettor shall be imprisoned at hard labor for not less than twenty nor
7 more than fifty years.

8 (2)(a) If the offense is theft or receiving stolen things, and is not punishable
9 as a felony, the aider and abettor shall be fined not more than two hundred dollars,
10 imprisoned for not more than six months, or both.

11 (b) If the offense is receiving stolen things, and is punishable as a felony, the
12 aider and abettor shall be fined not more than two hundred dollars, imprisoned for
13 not more than one year, or both.

14 (c)(i) If the offense is theft of an amount not less than five hundred dollars
15 nor more than five thousand dollars, the aider and abettor shall be fined not more
16 than five hundred dollars, imprisoned for not more than one year, or both.

17 (ii) If the offense is theft of an amount over five thousand dollars, the aider
18 and abettor shall be fined not more than two thousand dollars, imprisoned, with or
19 without hard labor, for not more than five years, or both.

20 (3) In all other cases, the aider and abettor shall be fined, imprisoned, or
21 both, in the same manner as the principal of the offense, except that such fine and
22 term of imprisonment for the aider and abettor shall not exceed one-half of the
23 maximum fine prescribed for the offense nor shall it exceed one-half of the
24 maximum term of imprisonment prescribed for the offense.

25 B. For the purposes of this Section, the term "peace officer" means any peace
26 officer as defined in R.S. 40:2402.

27 Section 2. Code of Criminal Procedure Article 881.1(A)(1) and (2) are hereby
28 amended and reenacted and Code of Criminal Procedure Article 881.1(A)(5) is hereby
29 enacted to read as follows:

1 Art. 881.1. Motion to reconsider sentence

2 A.(1) ~~In~~ Except as provided in Subparagraph (5) of this Paragraph, in felony
3 cases, within thirty days following the imposition of sentence or within such longer
4 period as the trial court may set at sentence, the state or the defendant may make or
5 file a motion to reconsider sentence.

6 (2) ~~In~~ Except as provided in Subparagraph (5) of this Paragraph, in
7 misdemeanor cases, the defendant may file a motion to reconsider sentence at any
8 time following commencement or execution of such sentence. The court may grant
9 the motion and amend the sentence, even following completion of execution of the
10 sentence, to impose a lesser sentence which could lawfully have been imposed.

11 * * *

12 (5)(a) Notwithstanding any provision of law to the contrary, if the defendant
13 is incarcerated after having been convicted as a principal in the commission of a
14 crime as defined by R.S. 14:24, but was actually an aider or abettor in the
15 commission of the crime as defined by R.S. 14:24.1, the defendant may file a motion
16 to reconsider the sentence if he has served at least one-third of the sentence imposed
17 upon conviction as a principal in the commission of the crime.

18 (b) The motion to reconsider the sentence shall set forth the evidence
19 supporting the claim that the defendant was an aider and abettor in the commission
20 of the crime as defined by R.S. 14:24.1 and not a principal in the commission of the
21 crime as defined by R.S. 14:24. If, based upon facts previously presented at trial or
22 upon facts proffered by the defendant in support of the motion pursuant to Paragraph
23 D of this Article, the court determines by a preponderance of the evidence that the
24 defendant was an aider and abettor in the commission of the offense, the court shall
25 grant the motion and amend the sentence of the defendant in accordance with the
26 provisions of R.S. 14:27(E), with credit for time served by the offender for the
27 sentence imposed upon him as a principal in the commission of the offense.

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(c) The provisions of this Paragraph shall not apply to any defendant who is

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incarcerated for the conviction of a sex offense as defined in R.S. 15:541.

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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Smith

HB No. 154

Abstract: Adds "aider and abettor" to the list of possible parties to a crime, provides penalties for aiding and abetting in a criminal offense, and provides for the procedure by which an aider and abettor may be resentenced.

Present law provides for the following parties to crimes: principal and accessory after the fact.

Present law provides that "principals" are all persons concerned in the commission of a crime, whether they directly commit the act, aid and abet in its commission, or directly or indirectly counsel or procure another to commit the crime.

Proposed law adds "aider and abettor" to the list of possible parties to a crime, and amends the definition of "principal" to no longer include persons who "aid and abet" in the commission of the act.

Proposed law defines "aider and abettor" as a person concerned in the commission of a crime who assists in the commission of the act constituting the offense but who does not directly commit the act and does not counsel or direct another person with the intent of causing that person to commit the offense.

Provides that an aider and abettor shall be sentenced pursuant to the provisions of proposed law, unless the person aids and abets in the commission of a sex offense in which case the person shall be punished as a principal in the commission of the offense.

Proposed law provides for the following penalties for an "aider and abettor":

- (1)
- If the offense is punishable by death or life imprisonment, the aider and abettor shall be imprisoned at hard labor for 10 to 50 years.
- (2)
- If the offense is punishable by death or life imprisonment and is against an individual who is a peace officer engaged in the performance of his lawful duty, the aider and abettor shall be imprisoned at hard labor for 20 to 50 years.
- (3)
- If the offense is theft or receiving stolen things, and is not punishable as a felony, the aider and abettor shall be fined not more than \$200, imprisoned for not more than six months, or both.
- (4)
- If the offense is receiving stolen things, and is punishable as a felony, the aider and abettor shall be fined not more than \$200, imprisoned for not more than one year, or both.

- (5) If the offense is theft of an amount not less than \$500 nor more than \$5,000, the aider and abettor shall be fined not more than \$500, imprisoned for not more than one year, or both.
- (6) If the offense is theft of an amount over \$5,000, the aider and abettor shall be fined not more than \$2,000, imprisoned, with or without hard labor, for not more than five years, or both.
- (7) In all other cases the aider and abettor shall be fined, imprisoned, or both, in the same manner as the principal of the offense, except that such fine and term of imprisonment for the aider and abettor shall not exceed $\frac{1}{2}$ of the maximum fine prescribed for the offense nor shall it exceed $\frac{1}{2}$ of the maximum term of imprisonment prescribed for the offense.

Proposed law authorizes a defendant who is incarcerated after having been convicted as a principal in the commission of a crime, but who actually aided and abetted in the commission of the crime as defined by proposed law, to file a motion to reconsider the sentence if he served at least $\frac{1}{3}$ of the sentence imposed upon conviction as a principal in the commission of the crime. Proposed law further provides the procedure for such motions to reconsider.

(Amends R.S. 14:23, 24, and 25 and C.Cr.P. Art. 881.1(A)(1) and (2); Adds R.S. 14:24.1 and 27.1 and C.Cr.P. Art. 881.1(A)(5))