ENROLLED

Regular Session, 2011

ACT No. 349

HOUSE BILL NO. 305

BY REPRESENTATIVE LIGI

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

AN ACT

To enact Code of Criminal Procedure Article 881.6 and 881.7, relative to sentencing; to provide for the reduction of a sentence when the defendant assists in an investigation or prosecution; to provide for definitions; to provide for time periods; to provide for memorandums of understanding; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Criminal Procedure Article 881.6 and 881.7 are hereby enacted to read as follows:

Art. 881.6. Reducing a sentence for substantial assistance

A. Upon motion of the state, the sentencing court may reduce the defendant's sentence if, after sentencing, the defendant provided substantial assistance in furtherance of the investigation or prosecution of another person.

B. In evaluating whether the defendant has provided substantial assistance pursuant to the provisions of this Article, the sentencing court may consider the defendant's presentence or postsentence assistance in furtherance of the investigation or prosecution.

C. If the sentencing court makes a determination to reduce the sentence to a time period which is less than the minimum sentence provided by law, that sentence shall not be imposed without the consent of the district attorney.

D. For purposes of this Article, "sentencing" means the oral announcement of the sentence.

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Art. 881.7. Memorandum of understanding; limits on reduction of sentence for substantial assistance by a defendant

A. Prior to any defendant receiving a reduction of sentence pursuant to Code of Criminal Procedure Article 881.6, the prosecuting attorney shall enter into a memorandum of understanding with the defendant. Such memorandum of understanding shall be in writing.

B. The memorandum of understanding shall be signed by the following:

(1) The prosecuting attorney or his designee.

(2) The defendant.

(3) The tutor or legal guardian of the defendant, if the defendant is a minor.

(4) The attorney representing the defendant, if the defendant is represented by counsel.

C. The memorandum of understanding shall not be considered a grant of immunity from criminal prosecution.

D. The memorandum of understanding shall include the entirety of the agreement between the state and the defendant and shall include the following information:

(1) A statement that the state may move for the defendant to receive a reduction of sentence in return for the defendant providing substantial assistance in furtherance of the investigation or prosecution of another person.

(2) A statement that the sentencing court shall examine information provided by the state in determining the nature and extent of the assistance provided by the defendant and the reduction of sentence.

(3) A statement that the sentencing court shall not be permitted to reduce the defendant's sentence to a time period which is less than the minimum sentence provided by law without the consent of the district attorney.

(4) A statement that the memorandum of understanding constitutes the entirety of the agreement between the state and the defendant and that the district attorney shall not recommend a reduction of the defendant's sentence for assistance

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not described in the memorandum of understanding nor to any greater extent than that which is described in the memorandum of understanding.

(5) A statement that the sentencing court may choose not to grant the motion for reduction of sentence or accept any sentencing recommendation made by the state.

E. The memorandum of understanding shall detail the responsibilities agreed to by the defendant relating to any substantial assistance provided by the defendant in the furtherance of an investigation or prosecution of another person and any possible reduction of sentence, including but not limited to the following:

(1) A requirement that the defendant provide complete and truthful information to all law enforcement officials related to all relevant investigations.

(2) A statement of the substance of the proposed testimony of the witness.

F. The memorandum of understanding shall detail the responsibilities agreed to by the state relating to the reduction of sentence, including but not limited to the following:

(1) The circumstances under which the state will move for a reduction of sentence pursuant to Code of Criminal Procedure Article 881.6, including the nature and level of assistance the defendant is required to provide before the state will move for such reduction of sentence.

(2) The range of the sentencing recommendation that the state agrees to make to the sentencing court in a motion for reduction of sentence and that the district attorney shall make no other recommendation than that which is described in the memorandum of understanding.

(3) The reduction of sentence the state will recommend for each particular instance of assistance or form of assistance when the defendant provides assistance in more than one investigation or prosecution.

(4) The circumstances in which the district attorney shall consent to a reduction of sentence to a time period that is less than the minimum sentence provided by law.

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G. When the defendant meets his obligation as described in the memorandum of understanding, the state shall move for a reduction of sentence in accordance with the memorandum of understanding. The memorandum of understanding shall be filed into the criminal record.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

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