

2018 Regular Session

HOUSE BILL NO. 389

BY REPRESENTATIVE GARY CARTER

CRIME/SEX OFFENSES: Increases penalties for the crime of sexual assault of persons with infirmities and provides enhanced penalties under certain circumstances

1 AN ACT

2 To amend and reenact R.S. 14:93.5(B) and (D), relative to sexual battery of persons with  
3 infirmities; to provide relative to the crime of sexual battery of persons with  
4 infirmities; to increase the penalties for the crime of sexual battery of persons with  
5 infirmities; to provide penalties for the crime when the victim is the resident of a  
6 nursing home or residential facility and the offender is an employee of such facility;  
7 and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 14:93.5(B) and (D) are hereby amended and reenacted to read as  
10 follows:

11 §93.5. Sexual battery of persons with infirmities

12 \* \* \*

13 B. For purposes of this Section, "sexual acts" mean either of the following:

14 (1) The touching of the anus or genitals of the victim by the offender using  
15 any instrumentality or any part of the body of the offender; ~~or,~~

16 (2) The touching of the anus or genitals of the offender by the victim using  
17 any instrumentality or any part of the body of the victim.

18 \* \* \*

19 D.(1) ~~Whoever~~ Except as provided in Paragraph (2) of this Subsection,  
20 whoever commits the crime of sexual battery of persons with infirmities shall be

1           punished by imprisonment, with or without hard labor, for not more than ~~ten~~ twenty  
2           years.

3                     (2) If the victim is a resident of a nursing home, facility for persons with  
4           intellectual disabilities, mental health facility, hospital, or other residential facility  
5           and the offender is an employee of such home or facility, the offender shall be  
6           punished by imprisonment, with or without hard labor, for not more than twenty-five  
7           years.

#### 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)]

HB 389 Engrossed

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**Abstract:** Increases the term of imprisonment for the crime of sexual battery of persons with infirmities and provides for enhanced penalties when the victim is the resident of a nursing home or other facility and the offender is an employee of the facility.

Present law defines the crime of sexual battery of persons with infirmities as the intentional engaging in sexual acts with another person, who is not the spouse of the offender, when:

- (1) The offender compels the victim, who is physically incapable of preventing the act because of advanced age or physical infirmity, to submit by placing the victim in fear of receiving bodily harm.
- (2) The victim is incapable of resisting or of understanding the nature of the act by reason of stupor or abnormal condition of the mind produced by an intoxicating, narcotic, or anesthetic agent administered by or with the privity of the offender.
- (3) The victim has such incapacity, by reason of a stupor or abnormal condition of mind from any cause, and the offender knew or should have known of the victim's incapacity.
- (4) The victim is incapable, through unsoundness of mind, whether temporary or permanent, of understanding the nature of the act, and the offender knew or should have known of the victim's incapacity.

Proposed law defines "sexual acts" to mean either of the following:

- (1) The touching of the anus or genitals of the victim by the offender using any instrumentality or any part of the body of the offender.
- (2) The touching of the anus or genitals of the offender by the victim using any instrumentality or any part of the body of the victim.

Proposed law provides that normal medical treatment and normal sanitary care shall not be construed as an offense under present law.

Present law provides that whoever commits the crime of sexual battery of persons with infirmities shall be punished by imprisonment, with or without hard labor, for not more than ten years.

Proposed law increases the term of imprisonment to not more than 20 years, and provides that if the victim is a resident of a nursing home, facility for persons with intellectual disabilities, mental health facility, hospital, or other residential facility and the offender is an employee of such home or facility, the offender shall be punished by imprisonment, with or without hard labor, for not more than 25 years.

(Amends R.S. 14:93.5(B) and (D))