

2019 Regular Session

SENATE BILL NO. 138

BY SENATOR GATTI

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

CRIME/PUNISHMENT. Provides relative to the definition of "serious bodily injury".  
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AN ACT

To amend and reenact R.S. 14:34.4(B)(2), 52.2(E) and 92.2(A)(4), R.S. 15:1212(B)(4), and R.S. 32:402(B)(1)(c)(ii), 417(E)(2), 666(A)(1)(a)(i) and 681(A) and (B), to enact R.S. 14:2(C) and R.S. 32:1.1, and to repeal R.S. 14:34.1(B)(3), 34.7(B)(3), 34.9(B)(4), 35.3(B)(6), 39.2(C), 43.2(B), 64.4(A)(2), 93.2.3(A)(2), 100(B)(2), 102.12(4), 102.22(B)(2), 108.1(E)(2)(b), 231(D)(4), 403(A)(1)(b)(ii), 403.7(B)(4), and 502(B)(3) and R.S. 32:65(D)(2)(b), 80(A)(4)(c), and 123(E)(2), relative to the definition of "serious bodily injury"; to provide a universal definition of "serious bodily injury" for purposes of certain offenses; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 14:34.4(B)(2), 52.2(E) and 92.2(A)(4) are hereby amended and reenacted and R.S. 14:2(C) is hereby enacted to read as follows:

§2. Definitions

\* \* \*

**C. For purposes of this Title, "serious bodily injury" means bodily injury that involves any of the following: unconsciousness; extreme physical pain; protracted and obvious disfigurement; protracted loss or impairment of**

1 the function of a bodily member, organ, or mental faculty; or a substantial risk  
2 of death. For purposes of R.S. 14:403 (abuse of children), "serious bodily  
3 injury" shall also include injury resulting from starvation or malnutrition.

4 \* \* \*

5 §34.4. Battery of a school or recreation athletic contest official

6 B.(1) \* \* \*

7 (2) Whoever commits the crime of battery of a school or recreation athletic  
8 contest official which results in serious bodily injury to the victim ~~as defined in R.S.~~  
9 ~~14:34.1(B)(3)~~ shall be fined not less than one thousand dollars and not more than  
10 five thousand dollars and imprisoned for not less than ten days nor more than six  
11 months.

12 \* \* \*

13 §52.2. Negligent arson

14 \* \* \*

15 E. Whoever commits the crime of negligent arson resulting in death or  
16 serious bodily injury to a human being shall be fined not more than five thousand  
17 dollars and imprisoned, with or without hard labor, for not more than five years. In  
18 addition, the offender shall be ordered to pay restitution for damages sustained. ~~For~~  
19 ~~the purposes of this Subsection, "serious bodily injury" means bodily injury that~~  
20 ~~involves unconsciousness, extreme physical pain or protracted and obvious~~  
21 ~~disfigurement, or protracted loss or impairment of the function of a bodily member,~~  
22 ~~organ, or mental faculty, or a substantial risk of death.~~

23 \* \* \*

24 §92.2. Improper supervision of a minor by parent or legal custodian; penalty

25 A. Improper supervision of a minor by a parent or legal custodian, who has  
26 care and control of the minor, includes any of the following:

27 \* \* \*

28 (4) Causing or permitting an unlicensed minor to drive a motor vehicle or  
29 power cycle upon any public road or highway in this state, in violation of R.S.





1 in a collision which results in the serious bodily injury or death of another person,  
 2 the person shall be subject to the penalties provided for in R.S. 14:92.2(B)(3). ~~For~~  
 3 ~~purposes of this Paragraph, "serious bodily injury" means a bodily injury which~~  
 4 ~~involves unconsciousness, protracted and obvious disfigurement, or protracted loss~~  
 5 ~~or impairment of the function of a bodily member, organ, or mental faculty, or a~~  
 6 ~~substantial risk of death.~~

7 \* \* \*

8 §666. Refusal to submit to chemical test; submission to chemical tests; exception;  
 9 effects of

10 A.(1)(a)(i) When a law enforcement officer has probable cause to believe that  
 11 a person has violated R.S. 14:98, 98.1, or any other law or ordinance that prohibits  
 12 operating a vehicle while intoxicated, that person may not refuse to submit to a  
 13 chemical test or tests if he has refused to submit to such test or tests on two previous  
 14 and separate occasions of any previous such violation or in any case wherein a  
 15 fatality has occurred or a person has sustained serious bodily injury in a crash  
 16 involving a motor vehicle, aircraft, watercraft, vessel, or other means of conveyance.  
 17 ~~Serious bodily injury means bodily injury which involves unconsciousness,~~  
 18 ~~protracted and obvious disfigurement, or protracted loss or impairment of the~~  
 19 ~~function of a bodily member, organ, or mental faculty, or a substantial risk of death.~~

20 The law enforcement officer shall direct that a chemical test or tests be conducted  
 21 of a person's blood, urine, or other bodily substance, or perform a chemical test of  
 22 such person's breath, for the purpose of determining the alcoholic content of his  
 23 blood and the presence of any abused substance or controlled substance as set forth  
 24 in R.S. 40:964 in his blood in such circumstances. The officer may direct a person  
 25 to submit to a breath test, and if indicated, an additional blood test for the purpose  
 26 of testing for the presence of alcohol, abused substances, and controlled dangerous  
 27 substances. A refusal of any such test or tests shall result in the suspension of  
 28 driving privileges as provided by the provisions of this Part. A physician, physician  
 29 assistant, registered nurse, licensed practical nurse, emergency medical technician,

1 chemist, nurse practitioner, or other qualified technician shall perform a chemical  
2 test in accordance with the provisions of R.S. 32:664 when directed to do so by a law  
3 enforcement officer.

4 \* \* \*

5 §681. Postaccident drug testing; accidents involving serious bodily injury or  
6 fatalities, required

7 A. The operator of any motor vehicle which is involved in a collision or the  
8 operator of any watercraft involved in a collision, crash, or other casualty in which  
9 a serious bodily injury or fatality occurs shall be deemed to have given consent to,  
10 and shall be administered, a chemical test or tests of his blood, urine, or other bodily  
11 substance for the purpose of determining the presence of any abused substance or  
12 controlled dangerous substance as set forth in R.S. 40:964 or any other impairing  
13 substance.

14 B. The test or tests shall be administered at the direction of a law enforcement  
15 officer having reasonable grounds to believe the person to have been driving or in  
16 actual physical control of a motor vehicle upon the public highways of this state  
17 which is involved in a collision or to have been operating or in physical control of  
18 a watercraft on the waterways of this state involved in a collision, crash, or other  
19 casualty in which serious bodily injury or a fatality occurs in order to determine  
20 the presence of any abused substance or controlled dangerous substance as set  
21 forth in R.S. 40:964 or any other impairing substance. The law enforcement  
22 agency by which such officer is employed shall designate in writing under what  
23 conditions the tests shall be administered.

24 \* \* \*

25 Section 4. R.S. 14:34.1(B)(3), 34.7(B)(3), 34.9(B)(4), 35.3(B)(6), 39.2(C), 43.2(B),  
26 64.4(A)(2), 93.2.3(A)(2), 100(B)(2), 102.12(4), 102.22(B)(2), 108.1(E)(2)(b), 231(D)(4),  
27 403(A)(1)(b)(ii), 403.7(B)(4), and 502(B)(3) and R.S. 32:65(D)(2)(b), 80(A)(4)(c), and  
28 123(E)(2) are hereby repealed in their entirety.

29 Section 5. This Act shall become effective upon signature by the governor or, if not

1 signed by the governor, upon expiration of the time for bills to become law without signature  
 2 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
 3 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
 4 effective on the day following such approval.

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The original instrument and the following digest, which constitutes no part  
 of the legislative instrument, were prepared by Alden A. Clement Jr.

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## DIGEST

SB 138 Original

2019 Regular Session

Gatti

The following present law offenses defined in Title 14 of the La. Revised Statutes of 1950 either require serious bodily injury as an element of the offense, or provide for enhanced penalties when the offense results in serious bodily injury: second degree battery; battery of a school or recreation athletic contest official; aggravated second degree battery; battery of a dating partner; domestic abuse battery; first degree vehicular negligent injury; criminal hazing; second degree sexual battery; human trafficking; negligent arson; second degree robbery; pornography involving juveniles; computer-aided solicitation of a minor; improper supervision of a minor by parent or legal custodian; retaliation by a minor against a parent; legal custodian, witness, or complainant; second degree cruelty to juveniles; hit-and-run driving; unlawful ownership of a vicious dog; harboring or concealing an animal which has bitten or inflicted serious bodily injury on a human; flight from an officer and aggravated flight from an officer; threatening a public official; false communication with the intent to cause an emergency response; terrorism; prohibition on counterfeit and nonfunctional air bags and air bag fraud; riot; inciting to riot; failure to comply with command to disperse; wrongful use of public property; prohibition on interference with educational process; abuse of children; failure to report a missing child; and failure to seek assistance. Present law does not provide a universal definition of "serious bodily injury" for purposes of these present law offenses, but instead defines "serious bodily injury" in the context of each present law offense.

Proposed law defines "serious bodily injury" for the purposes of these present law offenses as bodily injury that involves unconsciousness, extreme physical pain, protracted and obvious disfigurement, protracted loss or impairment of the function of a bodily member, organ, or mental faculty, or a substantial risk of death. Proposed law further provides that for purposes of the present law offense of abuse of children, "serious bodily injury" includes injury resulting from starvation or malnutrition.

Proposed law otherwise retains present law.

Present law creates within the La. Commission on Law Enforcement and the Administration of Criminal Justice a Uniform Law Enforcement Statewide Reporting Database. Present law further provides that the commission's powers and duties include the preparation and distribution of forms to be used in reporting data to the database, which forms are to provide, among other things, for detailed information regarding final judgments in civil cases related to "serious bodily injury" as defined in present law relative to second degree battery.

Proposed law changes the applicable definition of "serious bodily injury" for purposes of present law from the definition contained in present law relative to second degree battery to the definition contained in proposed law defining "serious bodily injury" for purposes of Title 14 of the La. Revised Statutes of 1950.

Proposed law otherwise retains present law.

The following present law offenses defined in Title 32 of the Louisiana Revised Statutes of 1950 either require serious bodily injury as an element of the offense, or provide for enhanced penalties when the offense results in serious bodily injury: drag racing and racing on public roads and certain property; overtaking and passing school buses; stop sign and yield sign violations; allowing unlicensed persons under the age of 17 to drive; and refusal to submit to chemical test. Present law does not provide a universal definition of "serious bodily injury" for purposes of these present law offenses, but instead defines "serious bodily injury" in the context of each present law offense.

Proposed law defines "serious bodily injury" for the purposes of these present law offenses as bodily injury that involves unconsciousness, extreme physical pain, protracted and obvious disfigurement, protracted loss or impairment of the function of a bodily member, organ, or mental faculty, or a substantial risk of death.

Proposed law otherwise retains present law.

Present law requires the operator of any motor vehicle or watercraft involved in a collision, crash, or other casualty in which a fatality occurs to be administered a chemical test of his blood, urine, or other bodily substance for the purposes of determining the presence of any abused or controlled dangerous substance.

Proposed law extends this present law requirement to the operator of any motor vehicle or watercraft involved in a collision, crash, or other casualty in which a serious bodily injury occurs.

Present law requires that the test or tests to be administered to the operator of any motor vehicle or watercraft involved in a collision, crash, or other casualty in which a fatality occurs be administered at the direction of a law enforcement officer having reasonable grounds to believe the person driving or in actual physical control of a motor vehicle or watercraft involved in a collision, crash, or other casualty in which a fatality occurs.

Proposed law extends this present law requirement to the person driving or in actual physical control of a motor vehicle or watercraft involved in a collision, crash, or other casualty in which a serious bodily injury occurs to determine the presence of any abused substance or controlled dangerous substance.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 14:34.4(B)(2), 52.2(E) and 92.2(A)(4), R.S. 15:1212(B)(4), and R.S. 32:402(B)(1)(c)(ii), 417(E)(2), 666(A)(1)(a)(i) and 681(A) and (B); adds R.S. 14:2(C) and R.S. 32:1.1; repeals R.S. 14:34.1(B)(3), 34.7(B)(3), 34.9(B)(4), 35.3(B)(6), 39.2(C), 43.2(B), 64.4(A)(2), 93.2.3(A)(2), 100(B)(2), 102.12(4), 102.22(B)(2), 108.1(E)(2)(b), 231(D)(4), 403(A)(1)(b)(ii), 403.7(B)(4), and 502(B)(3) and R.S. 32:65(D)(2)(b), 80(A)(4)(c), and 123(E)(2))