## SLS 19RS-392

## ORIGINAL

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". (gov sig)

1	AN ACT
2	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
3	R.S. 32:402(B)(1)(c)(ii), 417(E)(2), 666(A)(1)(a)(i) and 681(A) and (B), to enact
4	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),
5	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),
6	102.12(4), 102.22(B)(2), 108.1(E)(2)(b), 231(D)(4), 403(A)(1)(b)(ii), 403.7(B)(4),
7	and 502(B)(3) and R.S. 32:65(D)(2)(b), 80(A)(4)(c), and 123(E)(2), relative to the
8	definition of "serious bodily injury"; to provide a universal definition of "serious
9	bodily injury" for purposes of certain offenses; and to provide for related matters.
10	Be it enacted by the Legislature of Louisiana:
11	Section 1. R.S. 14:34.4(B)(2), 52.2(E) and 92.2(A)(4) are hereby amended and
12	reenacted and R.S. 14:2(C) is hereby enacted to read as follows:
13	§2. Definitions
14	* * *
15	C. For purposes of this Title, "serious bodily injury" means bodily
16	injury that involves any of the following: unconsciousness; extreme physical
17	pain; protracted and obvious disfigurement; protracted loss or impairment of

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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.

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1	32:416 and 417, when the unlicensed minor is involved in a collision which results
2	in the serious bodily injury or death of another person. For purposes of this
3	Paragraph, "serious bodily injury" means a bodily injury which involves
4	unconsciousness, protracted and obvious disfigurement, or protracted loss or
5	impairment of the function of a bodily member, organ, or mental faculty, or a
6	substantial risk of death.
7	* * *
8	Section 2. R.S. 15:1212(B)(4) is hereby amended and reenacted to read as follows:
9	§1212. Creation of database; functions
10	* * *
11	B. The commission shall be the central depository for all information
12	submitted for entry into the database by law enforcement agencies, correctional
13	agencies, and institutions and shall have the following functions, powers, and duties:
14	* * *
15	(4) To prepare and distribute, to all such persons and agencies, forms to be
16	used in reporting data to the database. The forms shall provide for detailed
17	information regarding the name of the law enforcement officer, the designated
18	position, the status of all P.O.S.T. certifications and decertifications related to
19	training and qualifications, the hire date, the final disposition of disciplinary actions
20	that result in involuntary termination, resignations in lieu of termination, resignations
21	pending an investigation, final judgments in civil cases related to civil rights
22	violations under the provisions of 42 U.S.C. 1983 or related to serious bodily injury
23	as defined in R.S. 14:34.1(B) 14:2(C) or criminal cases related to the duties of a law
24	enforcement officer in the course and scope of his employment when the misconduct
25	of that specific law enforcement officer gave rise to the cause of action, and the date
26	of separation from service.
27	* * *
28	Section 3. R.S. 32:402(B)(1)(c)(ii), 417(E)(2), 666(A)(1)(a)(i), and 681(A) and (B)
29	are hereby amended and reenacted and R.S. 32:1.1 is hereby enacted to read as follows:

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1	<u>§1.1. Serious bodily injury; definition</u>
2	For purposes of this Title, "serious bodily injury" means bodily injury
3	that involves any of the following: unconsciousness; extreme physical pain;
4	protracted and obvious disfigurement; protracted loss or impairment of the
5	function of a bodily member, organ, or mental faculty; or a substantial risk of
6	<u>death.</u>
7	* * *
8	§402. Mandatory licensure; exceptions; violations
9	* * *
10	B.(1) * * * *
11	(c) * * *
12	(ii) If the unlicensed person is involved in a collision which results in the
13	serious bodily injury or death of another person, the person shall be subject to a fine
14	of not less than five hundred dollars and not more than one thousand dollars, or
15	imprisonment for up to six months, or both. However, nothing in this Item shall be
16	construed to prevent an unlicensed person from being charged with vehicular
17	homicide in violation of R.S. 14:32.1 or negligent homicide in violation of R.S.
18	14:32 if the collision results in the death of another person, or from being charged
19	with negligent injury, if the collision results in the serious injury of another person.
20	For purposes of this Item, "serious bodily injury" means a bodily injury which
21	involves unconsciousness, protracted and obvious disfigurement, or protracted loss
22	or impairment of the function of a bodily member, organ, or mental faculty, or a
23	substantial risk of death.
24	* * *
25	§417. Allowing unlicensed person under the age of seventeen to drive
26	* * *
27	E. The following penalties shall be imposed for a violation of this Section:
28	* * *
29	(2) However, if an unlicensed minor under the age of seventeen is involved

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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,

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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 §681. Postaccident drug testing; accidents involving serious bodily injury or 5 fatalities, required 6 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 controlled dangerous substance as set forth in R.S. 40:964 or any other impairing 12 13 substance. B. The test or tests shall be administered at the direction of a law enforcement 14 officer having reasonable grounds to believe the person to have been driving or in 15 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 a watercraft on the waterways of this state involved in a collision, crash, or other 18 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 conditions the tests shall be administered. 23 \* 24 \* 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), 25 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), 26 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

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- 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.

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

## DIGEST 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.

<u>Proposed law</u> defines "serious bodily injury" for the purposes of these <u>present law</u> 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. <u>Proposed law</u> further provides that for purposes of the <u>present law</u> offense of abuse of children, "serious bodily injury" includes injury resulting from starvation or malnutrition.

Proposed law otherwise retains present law.

<u>Present law</u> creates within the La. Commission on Law Enforcement and the Administration of Criminal Justice a Uniform Law Enforcement Statewide Reporting Database. <u>Present law</u> 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 <u>present law</u> relative to second degree battery.

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

Proposed law otherwise retains present law.

The following <u>present law</u> 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. <u>Present law</u> does not provide a universal definition of "serious bodily injury" for purposes of these <u>present law</u> offenses, but instead defines "serious bodily injury" in the context of each <u>present law</u> offense.

<u>Proposed law</u> defines "serious bodily injury" for the purposes of these <u>present law</u> 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.

<u>Present law</u> 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.

<u>Proposed law</u> extends this <u>present law</u> 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.

<u>Present law</u> 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.

<u>Proposed law</u> extends this <u>present law</u> 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))