

2022 Regular Session

SENATE BILL NO. 64

BY SENATOR CONNICK

CRIME/PUNISHMENT. Provides relative to crimes of violence and sex offenses. (8/1/22)

1 AN ACT

2 To amend and reenact R.S. 14:2(B)(8), (29) and (40), 41(B), 42(A)(6) and (C), 43.2(A)(1)

3 and (2), 43.3(A)(1), 44.1(A)(3), 44.2(B)(2), and the introductory paragraph of

4 93.5(A) and (B), Code of Criminal Procedure Art. 814(A)(12), and Code of

5 Evidence. Art. 412.1, and to enact R.S. 14:41(D), and 42(A)(7) and Code of Criminal

6 Procedure Art. 814(A)(69) and (70), relative to sex offenses; to provide relative to

7 crimes of violence; to provide relative to the elements of certain sex offenses; to

8 provide relative to certain evidence in sexual assault cases; to provide relative to

9 responsive verdicts for certain sex offenses; to provide definitions; and to provide

10 for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 14:2(B)(8), (29) and (40), 41(B), 42(A)(6) and (C), 43.2(A)(1) and

13 (2), 43.3(A)(1), 44.1(A)(3), 44.2(B)(2), and the introductory paragraph of 93.5(A) and (B)

14 are hereby amended and reenacted and R.S. 14:41(D) and 42(A)(7) are hereby enacted to

15 read as follows:

16 §2. Definitions

17 * * *

1 bodily injury on the victim:

2 (1) The touching of the anus or genitals of the victim by the offender using
3 any instrumentality or any part of the body of the offender, **directly or through**
4 **clothing**; or

5 (2) The touching of the anus or genitals of the offender by the victim using
6 any instrumentality or any part of the body of the victim, **directly or through**
7 **clothing**.

8 * * *

9 §43.3. Oral sexual battery

10 A. Oral sexual battery is the intentional touching of the anus or genitals of the
11 victim by the offender using the mouth or tongue of the offender, or the touching of
12 the anus or genitals of the offender by the victim using the mouth or tongue of the
13 victim, when any of the following occur:

14 (1) The victim, ~~who is not the spouse of the offender~~, is under the age of
15 fifteen years and is at least three years younger than the offender.

16 * * *

17 §44.1. Second degree kidnapping

18 A. Second degree kidnapping is the doing of any of the acts listed in
19 Subsection B of this Section wherein the victim is any of the following:

20 * * *

21 (3) Physically injured or sexually abused. **For the purpose of this**
22 **Paragraph, "sexually abused" means that the victim was subjected to any sex**
23 **offense as defined in R.S. 15:541.**

24 * * *

25 §44.2. Aggravated kidnapping of a child

26 * * *

27 B. * * *

28 (2) Notwithstanding the provisions of Paragraph (1) of this Subsection, if the
29 child is returned not physically injured or sexually abused, then the offender shall be

1 punished in accordance with the provisions of R.S. 14:44.1. **For the purposes of this**
 2 **Paragraph, "sexually abused" means that the child was subjected to any sex**
 3 **offense as defined in R.S. 15:541.**

4 * * *

5 §93.5. Sexual battery of persons with infirmities

6 A. Sexual battery of persons with infirmities is the intentional engaging in
 7 any of the sexual acts listed in Subsection B of this Section with another person, ~~who~~
 8 ~~is not the spouse of the offender,~~ when:

9 * * *

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

11 (1) The touching of the anus or genitals of the victim by the offender using
 12 any instrumentality or any part of the body of the offender, **directly or through**
 13 **clothing.**

14 (2) The touching of the anus or genitals of the offender by the victim using
 15 any instrumentality or any part of the body of the victim, **directly or through**
 16 **clothing.**

17 * * *

18 Section 2. Code of Criminal Procedure Art. 814(A)(12) is hereby amended and
 19 reenacted and (69) and (70) are hereby enacted to read as follows:

20 Art. 814. Responsive verdicts; in particular

21 A. The only responsive verdicts which may be rendered when the indictment
 22 charges the following offenses are:

23 * * *

24 12. First degree rape (formerly titled aggravated rape) of a child under the age
 25 of thirteen:

26 Guilty.

27 Guilty of attempted first degree rape.

28 Guilty of second degree rape.

29 Guilty of attempted second degree rape.

1 Guilty of third degree rape.

2 Guilty of attempted third degree rape.

3 **Guilty of sexual battery of a child under the age of thirteen.**

4 **Guilty of attempted sexual battery of a child under the age of thirteen.**

5 Guilty of sexual battery.

6 **Guilty of attempted sexual battery.**

7 **Guilty of molestation of a juvenile or a person with a physical or mental**
8 **disability with a victim under the age of thirteen.**

9 **Guilty of attempted molestation of a juvenile or a person with a physical**
10 **or mental disability with a victim under the age of thirteen.**

11 Guilty of molestation of a juvenile or a person with a physical or mental
12 disability.

13 Guilty of attempted molestation of a juvenile or a person with a physical or
14 mental disability.

15 **Guilty of indecent behavior with a juvenile with a victim under the age**
16 **of thirteen.**

17 **Guilty of attempted indecent behavior with a juvenile with a victim**
18 **under the age of thirteen.**

19 Guilty of indecent behavior with a juvenile.

20 Guilty of attempted indecent behavior with a juvenile.

21 Not guilty.

22 * * *

23 **69. Second Degree Kidnapping When Victim is Sexually Abused:**

24 **Guilty.**

25 **Guilty of attempted second degree kidnapping.**

26 **Guilty of any predicate sex offense or offenses alleged in the indictment**
27 **or bill of information.**

28 **Not guilty.**

29 **70. Aggravated Kidnapping of a Child When Victim is Sexually Abused:**

- 1 Guilty.
- 2 Guilty of attempted aggravated kidnapping of a child.
- 3 Guilty of any predicate sex offense or offenses alleged in the indictment.
- 4 Not guilty.

* * *

6 Section 3. Code of Evidence Art. 412.1 is hereby amended and reenacted to read as
7 follows:

8 Art. 412.1. Victim's attire in sexual assault cases

9 A. When an accused is charged with **a crime involving sexually assaultive**
10 **behavior or with acts that constitute a sex offense involving a victim who was**
11 **under the age of seventeen at the time of the offense,** ~~the crime of aggravated or~~
12 ~~first degree rape, forcible or second degree rape, simple or third degree rape, sexual~~
13 ~~battery, or second degree sexual battery,~~ the manner and style of the victim's attire
14 shall not be admissible as evidence that the victim encouraged or consented to the
15 offense; however, items of clothing or parts thereof may be introduced in order to
16 establish the presence or absence of the elements of the offense and the proof of its
17 occurrence.

18 B. The rules of admissibility of evidence provided by this Article shall also
19 apply to civil actions brought by the victim which are alleged to arise from ~~the~~
20 ~~crimes of aggravated or first degree rape, forcible or second degree rape, simple or~~
21 ~~third degree rape, sexual battery, or second degree sexual battery~~ **any crime**
22 **referenced in Paragraph A of this Article** committed by the defendant, whether
23 or not convicted of such crimes.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Whitney Kauffeld.

DIGEST

SB 64 Engrossed 2022 Regular Session Connick

Present law provides for a nonexhaustive list of crimes of violence , the definition of rape, and the crimes of first degree/aggravated rape, second degree sexual battery, oral sexual battery, second degree kidnapping, aggravated kidnapping of a child, and sexual battery of persons with infirmities.

Proposed law does the following:

- (1) Adds the present law crimes of aggravated kidnapping of a child, molestation, and sexual battery of persons with infirmities to the list of crimes of violence.
- (2) Defines rape to include foreign object penetration.
- (3) Defines first degree/aggravated rape to include rapes committed during the course of burglary crimes.
- (4) Replaces the definitions of "physical infirmity" and "mental infirmity" relative to first degree/aggravated rape with more inclusive language to better protect victims with disabilities.
- (5) Defines the term "sexually abused" relative to second degree kidnapping and aggravated kidnapping of a child to mean that the victim was subjected to any offense defined as a sex offense by present law.
- (6) Aligns second degree sexual battery, oral sexual battery, and sexual battery of persons with infirmities with other provisions of present law.

Proposed law otherwise retains present law.

Present law provides for responsive verdicts for certain present law sex offenses.

Proposed law retains present law and adds responsive verdicts for aggravated kidnapping of a child when the victim is sexually abused and second degree kidnapping when the victim is sexually abused.

Proposed law makes the "under 13" variants of sexual battery, molestation, and indecent behavior with a juvenile responsive to first degree/aggravated rape of a child under 13.

Present law provides that when an accused is charged with certain sex offenses, the manner and style of the victim's attire is inadmissible to show that the victim encouraged or consented to the offense, but may be introduced to establish the presence or absence of the elements of the offense and the proof of its occurrence. Present law further provides that the present law rules of admissibility also apply to civil actions brought by the victim that are alleged to arise from sex offenses committed by the defendant, whether or not convicted of these crimes.

Proposed law updates the evidentiary rule that a sexual assault victim's attire is generally inadmissible in a proceeding to broadly include all crimes of sexual assault or a crime defined as a sex offense by present law.

Effective on August 1, 2022.

(Amends R.S. 14:2(B)(8), (29), and (40), 41(B), 42(A)(6) and (C), 43.2(A)(1) and (2), 43.3(A)(1), 44.1(A)(3), 44.2(B)(2), the introductory paragraph of 93.5(A) and (B), C.Cr.P. Art. 814(A)(12), and C.E. Art. 412.1; adds R.S. 14:41(D), and 14:42(A)(7) and C.Cr.P. Art. 814(A)(69) and (70))