

2022 Regular Session

SENATE BILL NO. 64

BY SENATORS CONNICK AND BARROW

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           B. In this Code, "crime of violence" means an offense that has, as an element,  
 2           the use, attempted use, or threatened use of physical force against the person or  
 3           property of another, and that, by its very nature, involves a substantial risk that  
 4           physical force against the person or property of another may be used in the course  
 5           of committing the offense or an offense that involves the possession or use of a  
 6           dangerous weapon. The following enumerated offenses and attempts to commit any  
 7           of them are included as "crimes of violence":

8   \*       \*       \*

9           (8) ~~Repealed by Acts 2017, No. 281, §3, eff. August 1, 2017~~ **Aggravated**  
 10          **kidnapping of a child.**

11   \*       \*       \*

12          (29) ~~Repealed by Acts 2017, No. 281, §3, eff. August 1, 2017~~ **Molestation**  
 13          **of a juvenile or a person with a physical or mental disability.**

14   \*       \*       \*

15          (40) ~~Repealed by Acts 2014, No. 602, §7, eff. June 12, 2014~~ **Sexual battery**  
 16          **of persons with infirmities.**

17   \*       \*       \*

18          §41. Rape; defined

19   \*       \*       \*

20           B. Emission is not necessary, and any sexual penetration, when the rape  
 21           involves vaginal or anal intercourse, **whether the penetration is accomplished**  
 22           **using the genitals of the offender or victim or using any instrumentality and**  
 23           however slight, is sufficient to complete the crime.

24   \*       \*       \*

25           **D. For purposes of this Subpart, "anal sexual intercourse" and "vaginal**  
 26           **sexual intercourse" mean the intentional engaging in any of the following acts**  
 27           **with another person:**

28           **(1) The penetration of the victim's anus or vagina by the offender using**  
 29           **the genitals of the offender.**





1 \* \* \*

2 §44.2. Aggravated kidnapping of a child

3 \* \* \*

4 B.

\* \* \*

5 (2) Notwithstanding the provisions of Paragraph (1) of this Subsection, if the  
6 child is returned not physically injured or sexually abused, then the offender shall be  
7 punished in accordance with the provisions of R.S. 14:44.1. **For the purposes of this**  
8 **Paragraph, "sexually abused" means that the child was subjected to any sex**  
9 **offense as defined in R.S. 15:541.**

10 \* \* \*

11 §93.5. Sexual battery of persons with infirmities

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

15 \* \* \*

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

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

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

23 \* \* \*

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

26 Art. 814. Responsive verdicts; in particular

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

29 \* \* \*



1 Guilty.

2 Guilty of attempted second degree kidnapping.

3 Guilty of any predicate sex offense or offenses alleged in the indictment  
4 or bill of information.

5 Not guilty.

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

7 Guilty.

8 Guilty of attempted aggravated kidnapping of a child.

9 Guilty of any predicate sex offense or offenses alleged in the indictment.

10 Not guilty.

11 \* \* \*

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

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

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

24 B. The rules of admissibility of evidence provided by this Article shall also  
25 apply to civil actions brought by the victim which are alleged to arise from ~~the~~  
26 ~~crimes of aggravated or first degree rape, forcible or second degree rape, simple or~~  
27 ~~third degree rape, sexual battery, or second degree sexual battery~~ any crime  
28 referenced in Paragraph A of this Article committed by the defendant, whether  
29 or not convicted of such crimes.

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The original instrument was prepared by Whitney Kauffeld. The following digest, which does not constitute a part of the legislative instrument, was prepared by Cheryl Serrett.

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## DIGEST

SB 64 Reengrossed

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), 93.5(A)(intro. para.) 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))

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill

1. Includes additional actions to definition of penetration with foreign object.
1. Make technical changes.