SLS 22RS-201 REENGROSSED

2022 Regular Session

SENATE BILL NO. 64

17

BY SENATORS CONNICK AND BARROW

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

1	ANACI
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

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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 dangerous weapon. The following enumerated offenses and attempts to commit any 6 of them are included as "crimes of violence": 7 8 9 (8) Repealed by Acts 2017, No. 281, §3, eff. August 1, 2017 Aggravated 10 kidnapping of a child. 11 12 (29) Repealed by Acts 2017, No. 281, §3, eff. August 1, 2017 Molestation 13 of a juvenile or a person with a physical or mental disability. 14 (40) Repealed by Acts 2014, No. 602, §7, eff. June 12, 2014 Sexual battery 15 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 however slight, is sufficient to complete the crime. 23 24 D. For purposes of this Subpart, "anal sexual intercourse" and "vaginal 25 sexual intercourse" mean the intentional engaging in any of the following acts 26 27 with another person: 28 (1) The penetration of the victim's anus or vagina by the offender using

the genitals of the offender.

1	(2) The penetration of the offender's anus or vagina by the victim using
2	the genitals of the victim.
3	(3) The penetration of the victim's anus or vagina by the offender using
4	any instrumentality, except that normal medical treatment or normal sanitary
5	care shall not be construed as sexual intercourse under the provisions of this
6	Section.
7	(4) The penetration of the offender's anus or vagina by the victim using
8	any instrumentality except that normal medical treatment or normal sanitary
9	care shall not be construed as sexual intercourse under the provisions of this
10	Section.
11	* * *
12	§42. First degree rape
13	A. First degree rape is a rape committed upon a person sixty-five years of age
14	or older or where the anal, oral, or vaginal sexual intercourse is deemed to be without
15	lawful consent of the victim because it is committed under any one or more of the
16	following circumstances:
17	* * *
18	(6) When the victim is prevented from resisting the act because the victim
19	suffers from a physical or mental infirmity preventing such resistance is a person
20	with a disability.
21	(7) When the offender commits the act when engaged in the perpetration
22	or attempted perpetration of any violation of Subsubpart 3 of Subpart A of Part
23	III of Chapter 1 of this Title, relative to burglary offenses.
24	* * *
25	C. For purposes of this Section, "person with a disability" means a person
26	with a mental, physical, or developmental disability that substantially impairs
27	the person's ability to provide adequately for his or her own care or protection.
28	the following words have the following meanings:
29	(1) "Physical infirmity" means a person who is a quadriplegic or paraplegic.

1	(2) "Mental infirmity" means a person with an intelligence quotient of
2	seventy or lower.
3	* * *
4	§43.2. Second degree sexual battery
5	A. Second degree sexual battery is the intentional engaging in any of the
6	following acts with another person when the offender intentionally inflicts serious
7	bodily injury on the victim:
8	(1) The touching of the anus or genitals of the victim by the offender using
9	any instrumentality or any part of the body of the offender, directly or through
10	<u>clothing</u> ; or
11	(2) The touching of the anus or genitals of the offender by the victim using
12	any instrumentality or any part of the body of the victim, directly or through
13	<u>clothing</u> .
14	* * *
15	§43.3. Oral sexual battery
16	A. Oral sexual battery is the intentional touching of the anus or genitals of the
17	victim by the offender using the mouth or tongue of the offender, or the touching of
18	the anus or genitals of the offender by the victim using the mouth or tongue of the
19	victim, when any of the following occur:
20	(1) The victim, who is not the spouse of the offender, is under the age of
21	fifteen years and is at least three years younger than the offender.
22	* * *
23	§44.1. Second degree kidnapping
24	A. Second degree kidnapping is the doing of any of the acts listed in
25	Subsection B of this Section wherein the victim is any of the following:
26	* * *
27	(3) Physically injured or sexually abused. For the purposes of this
28	Paragraph, "sexually abused" means that the victim was subjected to any sex
29	offense as defined in R.S. 15:541.

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	<u>clothing</u> .
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	<u>clothing</u> .
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 indictmen
28	charges the following offenses are:
29	* * *

1 12. First degree rape (formerly titled aggravated rape) of a child under the age of thirteen: 2 3 Guilty. 4 Guilty of attempted first degree rape. Guilty of second degree rape. 5 Guilty of attempted second degree rape. 6 Guilty of third degree rape. 7 8 Guilty of attempted third degree rape. 9 Guilty of sexual battery of a child under the age of thirteen. 10 Guilty of attempted sexual battery of a child under the age of thirteen. 11 Guilty of sexual battery. 12 Guilty of attempted sexual battery. 13 Guilty of molestation of a juvenile or a person with a physical or mental 14 disability with a victim under the age of thirteen. 15 Guilty of attempted molestation of a juvenile or a person with a physical 16 or mental disability with a victim under the age of thirteen. Guilty of molestation of a juvenile or a person with a physical or mental 17 18 disability. 19 Guilty of attempted molestation of a juvenile or a person with a physical or 20 mental disability. 21 Guilty of indecent behavior with a juvenile with a victim under the age 22 of thirteen. 23 Guilty of attempted indecent behavior with a juvenile with a victim under the age of thirteen. 24 25 Guilty of indecent behavior with a juvenile. Guilty of attempted indecent behavior with a juvenile. 26 27 Not guilty. 28 69. Second Degree Kidnapping When Victim is Sexually Abused: 29

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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

or not convicted of such crimes.

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.

DIGEST 2022 Regular Session

SB 64 Reengrossed

Connick

<u>Present law</u> 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 <u>present law</u> 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 <u>present law</u>.

Proposed law otherwise retains present law.

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

<u>Proposed law</u> retains <u>present law</u> 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.

<u>Proposed law</u> 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.

<u>Present law</u> 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. <u>Present law</u> further provides that the <u>present law</u> 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.

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

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.