

Regular Session, 2014

HOUSE BILL NO. 12

BY REPRESENTATIVE SMITH

CRIME: Amends crime against nature and aggravated crime against nature relative to certain provisions held to be unconstitutional

1 AN ACT

2 To amend and reenact R.S. 14:89 and 89.1(A) and to enact R.S. 14:89.1(C), relative to crime
3 against nature; to delete certain provisions of crime against nature held to be
4 unconstitutional; to amend the elements of crime against nature and aggravated
5 crime against nature relative to the repeal of the unconstitutional provision; and to
6 provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 14:89 and 89.1(A) are hereby amended and reenacted and R.S.
9 14:89.1(C) is hereby enacted to read as follows:

10 §89. Crime against nature

11 A. Crime against nature is the unnatural carnal copulation by a human being
12 ~~with another of the same sex or opposite sex or with an animal, except that anal~~
13 ~~sexual intercourse between two human beings shall not be deemed as a crime against~~
14 ~~nature when done under any of the circumstances described in R.S. 14:41, 14:42,~~
15 ~~14:42.1 or 14:43. Emission is not necessary; and, when committed by a human~~
16 ~~being with another, the use of the genital organ of one of the offenders of whatever~~
17 ~~sex offender is sufficient to constitute the crime.~~

18 B.~~(1)~~ Whoever violates the provisions of this Section shall be fined not more
19 than two thousand dollars, imprisoned, with or without hard labor, for not more than
20 five years, or both.

1 ~~(2) Whoever violates the provisions of this Section with a person under the~~
2 ~~age of eighteen years shall be fined not more than fifty thousand dollars, imprisoned~~
3 ~~at hard labor for not less than fifteen years nor more than fifty years, or both.~~

4 ~~(3) Whoever violates the provisions of this Section with a person under the~~
5 ~~age of fourteen years shall be fined not more than seventy-five thousand dollars,~~
6 ~~imprisoned at hard labor for not less than twenty-five years nor more than fifty years,~~
7 ~~or both.~~

8 ~~C. It shall be an affirmative defense to prosecution for a violation of this~~
9 ~~Section that, during the time of the alleged commission of the offense, the defendant~~
10 ~~was a victim of trafficking of children for sexual purposes as provided in R.S.~~
11 ~~14:46.3(E).~~

12 §89.1. Aggravated crime against nature

13 A. Aggravated crime against nature is ~~crime against nature~~ the unnatural
14 carnal copulation by a human being with another when committed under any one or
15 more of the following circumstances:

16 (1) When the victim resists the act to the utmost, but such resistance is
17 overcome by force;₂

18 (2) When the victim is prevented from resisting the act by threats of great
19 and immediate bodily harm accompanied by apparent power of execution;₂

20 (3) When the victim is prevented from resisting the act because the offender
21 is armed with a dangerous weapon; ~~or~~₂

22 (4) When through idiocy, imbecility, or any unsoundness of mind, either
23 temporary or permanent, the victim is incapable of giving consent and the offender
24 knew or should have known of such incapacity;₂

25 (5) When the victim is incapable of resisting or of understanding the nature
26 of the act, by reason of stupor or abnormal condition of mind produced by a narcotic
27 or anesthetic agent, administered by or with the privity of the offender; or when he
28 has such incapacity, by reason of a stupor or abnormal condition of mind from any
29 cause, and the offender knew or should have known of such incapacity; ~~or~~₂

1 (6) When the victim is under the age of seventeen years and the offender is
2 at least three years older than the victim.

3 * * *

4 C. Emission is not necessary, and the use of the genital organ of the offender
5 is sufficient to constitute the crime.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Smith

HB No. 12

Abstract: Repeals certain provisions of crime against nature held to be unconstitutional and amends crime against nature and aggravated crime against nature relative to the repeal of the unconstitutional provision.

Present law (R.S. 14:89) defines crime against nature as the unnatural carnal copulation by a human being with another of the same sex or opposite sex or with an animal and provides criminal penalties for convictions of this offense.

Present law (R.S. 14:89.1) defines aggravated crime against nature as crime against nature committed under certain circumstances including resistance by the victim, threats of great and immediate bodily harm to the victim, and when the victim is incapable of giving consent or resisting due to his age, unsoundness of mind, when or by reason of stupor produced by a narcotic or anesthetic agent.

In 2003, in the case *Lawrence v. Texas*, 539 U.S. 558 (2003), the U.S. Supreme Court held that a Texas statute making it a crime for two persons of the same sex to engage in certain intimate sexual conduct violates the Due Process Clause of the 14th Amendment of the U.S. Constitution.

Based on the holding in the *Lawrence* decision, in the case *La. Electorate of Gays and Lesbians v. Connick*, 902 So.2d 1090 (5th Cir. 2005), the 5th Circuit Court of Appeals recognized the unconstitutionality of present law (R.S. 14:89), but held that the trial court could sever unconstitutional portions of present law and leave in effect the portion forbidding copulation with an animal.

Proposed law repeals the provisions of crime against nature relative to consensual, uncompensated sexual activity between persons of the same sex which was held to be unconstitutional by the 5th Circuit Court of Appeals and the U.S. Supreme Court. Proposed law further repeals the penalty provisions associated with convictions involving this particular type of activity.

Proposed law amends present law aggravated crime against nature to reflect the repeal of this unconstitutional provision by defining aggravated crime against nature as the "unnatural carnal copulation by a human being with another" when committed under certain circumstances provided for in present law. Proposed law further provides that for aggravated crime against nature, emission is not necessary, and the use of the genital organ of the offender is sufficient to constitute the crime.

Proposed law retains all other provisions of present law relative to crime against nature and aggravated crime against nature.

(Amends R.S. 14:89 and 89.1(A); Adds R.S. 14:89.1(C))