

Regular Session, 2014

HOUSE BILL NO. 530

BY REPRESENTATIVE PYLANT

CRIMINAL/VICTIMS: Provides relative to the crimes of incest and aggravated incest

1 AN ACT

2 To amend and reenact R.S. 14:89(A) and (B) and 89.1(A) and (B), to enact R.S. 14:89.1(C)
3 and (D), and to repeal R.S. 14:78 and 78.1, relative to offenses affecting sexual
4 immorality; to repeal the crimes of incest and aggravated incest; to amend the
5 offense of crime against nature to include the elements and penalties of the crime of
6 incest; to amend the offense of aggravated crime against nature to include the
7 elements and penalties of the crime of aggravated incest; to direct the Louisiana State
8 Law Institute to amend all references in law accordingly; and to provide for related
9 matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 14:89(A) and (B) and 89.1(A) and (B) are hereby amended and
12 reenacted and R.S. 14:89.1(C) and (D) are hereby enacted to read as follows:

13 §89. Crime against nature

14 A. Crime against nature is ~~the~~ either of the following:

15 (1) The unnatural carnal copulation by a human being with another of the
16 same sex or opposite sex or with an animal, except that anal sexual intercourse
17 between two human beings shall not be deemed as a crime against nature when done
18 under any of the circumstances described in R.S. 14:41, 14:42, 14:42.1 or 14:43.
19 Emission is not necessary; and, when committed by a human being with another, the

1 use of the genital organ of one of the offenders of whatever sex is sufficient to
2 constitute the crime.

3 (2) The marriage to, or sexual intercourse with, any ascendant or descendant,
4 brother or sister, uncle or niece, aunt or nephew, with knowledge of their
5 relationship. The relationship must be by consanguinity, but it is immaterial whether
6 the parties to the act are related to one another by the whole or half blood. The
7 provisions of this Paragraph shall not apply where one person, not a resident of this
8 state at the time of the celebration of his marriage, contracted a marriage lawful at
9 the place of celebration and thereafter removed to this state.

10 B.(1) Whoever ~~violates~~ commits the offense of crime against nature in
11 violation of the provisions of Paragraph (A)(1) of this Section shall be fined not more
12 than two thousand dollars, imprisoned, with or without hard labor, for not more than
13 five years, or both.

14 (2) Whoever ~~violates~~ commits the offense of crime against nature in
15 violation of the provisions of Paragraph (A)(1) of this Section with a person under
16 the age of eighteen years shall be fined not more than fifty thousand dollars,
17 imprisoned at hard labor for not less than fifteen years nor more than fifty years, or
18 both.

19 (3) Whoever ~~violates~~ commits the offense of crime against nature in
20 violation of the provisions of Paragraph (A)(1) of this Section with a person under
21 the age of fourteen years shall be fined not more than seventy-five thousand dollars,
22 imprisoned at hard labor for not less than twenty-five years nor more than fifty years,
23 or both.

24 (4) Whoever commits the offense of crime against nature in violation of the
25 provisions of Paragraph (2) of this Section, where the crime is between an ascendant
26 and descendant, or between brother and sister, shall be imprisoned at hard labor for
27 not more than fifteen years.

28 (5) Whoever commits the offense of crime against nature in violation of the
29 provisions of Subsection (A)(2) of this Section, where the crime is between uncle

1 and niece, or aunt and nephew, shall be fined not more than one thousand dollars,
2 imprisoned, with or without hard labor, for not more than five years, or both.

3 * * *

4 §89.1. Aggravated crime against nature

5 A. Aggravated crime against nature is ~~crime against nature~~ either of the
6 following:

7 (1) A violation of the provisions of Paragraph (A)(1) of R.S. 14:89
8 committed under any one or more of the following circumstances:

9 ~~(1)~~(a) When the victim resists the act to the utmost, but such resistance is
10 overcome by force;

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

13 ~~(3)~~(c) When the victim is prevented from resisting the act because the
14 offender is armed with a dangerous weapon; ~~or,~~

15 ~~(4)~~(d) When through idiocy, imbecility, or any unsoundness of mind, either
16 temporary or permanent, the victim is incapable of giving consent and the offender
17 knew or should have known of such incapacity;

18 ~~(5)~~(e) When the victim is incapable of resisting or of understanding the
19 nature of the act, by reason of stupor or abnormal condition of mind produced by a
20 narcotic or anesthetic agent, administered by or with the privity of the offender; or
21 when he has such incapacity, by reason of a stupor or abnormal condition of mind
22 from any cause, and the offender knew or should have known of such incapacity; ~~or,~~

23 ~~(6)~~(f) When the victim is under the age of seventeen years and the offender
24 is at least three years older than the victim.

25 (2)(a) The engaging in any prohibited act enumerated in Subparagraph (b)
26 of this Paragraph with a person who is under eighteen years of age and who is known
27 to the offender to be related to the offender as any of the following biological, step,
28 or adoptive relatives: child, grandchild of any degree, brother, sister, half-brother,
29 half-sister, uncle, aunt, nephew, or niece.

1 **(b) The following are prohibited acts under this Paragraph:**

2 **(i) Sexual intercourse, sexual battery, second degree sexual battery, carnal**
3 **knowledge of a juvenile, indecent behavior with juveniles, pornography involving**
4 **juveniles, molestation of a juvenile or a person with a physical or mental disability,**
5 **crime against nature, cruelty to juveniles, parent enticing a child into prostitution, or**
6 **any other involvement of a child in sexual activity constituting a crime under the**
7 **laws of this state.**

8 **(ii) Any lewd fondling or touching of the person of either the child or the**
9 **offender, done or submitted to with the intent to arouse or to satisfy the sexual**
10 **desires of either the child, the offender, or both.**

11 **(c) Consent shall not be a defense to prosecution for a violation of the**
12 **provisions of this Paragraph.**

13 B. Whoever commits the crime of aggravated crime against nature in
14 violation of the provisions of Paragraph (A)(1) of this Section shall be imprisoned
15 at hard labor for not less than three nor more than fifteen years, such prison sentence
16 to be without benefit of suspension of sentence, probation or parole.

17 C.(1) Whoever commits the crime of aggravated crime against nature in
18 violation of the provisions of Paragraph (A)(2) of this Section shall be fined an
19 amount not to exceed fifty thousand dollars, or imprisoned, with or without hard
20 labor, for a term not less than five years nor more than twenty years, or both.

21 (2)(a) Whoever commits the crime of aggravated crime against nature in
22 violation of the provisions of Paragraph (A)(2) of this Section with a victim under
23 the age of thirteen years when the offender is seventeen years of age or older shall
24 be punished by imprisonment at hard labor for not less than twenty-five years nor
25 more than ninety-nine years. At least twenty-five years of the sentence imposed
26 shall be served without benefit of parole, probation, or suspension of sentence.

27 (3) Upon completion of the term of imprisonment imposed in accordance
28 with Paragraph (2) of this Subsection, the offender shall be monitored by the

1 Department of Public Safety and Corrections through the use of electronic
2 monitoring equipment for the remainder of his natural life.

3 (4) Unless it is determined by the Department of Public Safety and
4 Corrections, pursuant to rules adopted in accordance with the provisions of this
5 Subsection, that a sexual offender is unable to pay all or any portion of such costs,
6 each sexual offender to be electronically monitored shall pay the cost of such
7 monitoring.

8 (5) The costs attributable to the electronic monitoring of an offender who has
9 been determined unable to pay shall be borne by the department if, and only to, the
10 degree that sufficient funds are made available for such purpose whether by
11 appropriation of state funds or from any other source.

12 (6) The Department of Public Safety and Corrections shall develop, adopt,
13 and promulgate rules in the manner provided in the Administrative Procedure Act
14 that provide for the payment of such costs. Such rules shall contain specific
15 guidelines which shall be used to determine the ability of the offender to pay the
16 required costs and shall establish the reasonable costs to be charged. Such rules may
17 provide for a sliding scale of payment so that an offender who is able to pay a
18 portion, but not all, of such costs may be required to pay such portion.

19 D.(1) In addition to any sentence imposed under Subsection C, the court
20 shall, after determining the financial resources and future ability of the offender to
21 pay, require the offender, if able, to pay the victim's reasonable costs of counseling
22 that result from the offense.

23 (2) The amount, method, and time of payment shall be determined by the
24 court either by ordering that documentation of the offender's financial resources and
25 future ability to pay restitution and of the victim's pecuniary loss submitted by the
26 victim be included in the presentence investigation and report, or the court may
27 receive evidence of the offender's ability to pay and the victim's loss at the time of
28 sentencing.

1 (3) The court may provide for payment to a victim up to but not in excess of
2 the pecuniary loss caused by the offense. The offender may assert any defense that
3 he could raise in a civil action for the loss sought to be compensated by the
4 restitution order.

5 Section 2. R.S. 14:78 and 78.1 are hereby repealed in their entirety.

6 Section 3. The Louisiana State Law Institute is hereby directed to change all
7 references in Louisiana law from "incest" to "crime against nature" and from "aggravated
8 incest" to "aggravated crime against nature" to reflect the changes made in this Act.

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)]

Pylant

HB No. 530

Abstract: Repeals the crimes of incest and aggravated incest and includes the elements and penalties for these crimes in the offenses of crime against nature and aggravated crime against nature.

Present law provides for the crimes of incest, aggravated incest, crime against nature, and aggravated crime against nature.

Proposed law repeals the crime of incest and places the elements and penalties for the crime into the offense of crime against nature.

Proposed law repeals the crime of aggravated incest and places the elements and penalties for the crime into the offense of aggravated crime against nature.

Proposed law directs the La. State Law Institute to change all references in La. law from "incest" to "crime against nature" and from "aggravated incest" to "aggravated crime against nature" to reflect the changes made in proposed law.

(Amends R.S. 14:89(A) and (B) and 89.1(A) and (B); Adds R.S. 14:89.1(C) and (D); Repeals R.S. 14:78 and 78.1)