

Regular Session, 2014

HOUSE BILL NO. 530

BY REPRESENTATIVE PYLANT

AN ACT

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

Be it enacted by the Legislature of Louisiana:

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

§89. Crime against nature

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

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

(2) The marriage to, or sexual intercourse with, any ascendant or descendant, brother or sister, uncle or niece, aunt or nephew, with knowledge of their

1 relationship. The relationship must be by consanguinity, but it is immaterial whether
2 the parties to the act are related to one another by the whole or half blood. The
3 provisions of this Paragraph shall not apply where one person, not a resident of this
4 state at the time of the celebration of his marriage, contracted a marriage lawful at
5 the place of celebration and thereafter removed to this state.

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

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

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

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

24 (5) Whoever commits the offense of crime against nature in violation of the
25 provisions of Paragraph (A)(2) of this Section, where the crime is between uncle and
26 niece, or aunt and nephew, shall be fined not more than one thousand dollars,
27 imprisoned, with or without hard labor, for not more than five years, or both.

28 * * *

§89.1. Aggravated crime against nature

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

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

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

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

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

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

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

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

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

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

(i) Sexual intercourse, sexual battery, second degree sexual battery, carnal knowledge of a juvenile, indecent behavior with juveniles, pornography involving juveniles, molestation of a juvenile or a person with a physical or mental disability,

1 crime against nature, cruelty to juveniles, parent enticing a child into prostitution, or
2 any other involvement of a child in sexual activity constituting a crime under the
3 laws of this state.

4 (ii) Any lewd fondling or touching of the person of either the child or the
5 offender, done or submitted to with the intent to arouse or to satisfy the sexual
6 desires of either the child, the offender, or both.

7 (c) Consent shall not be a defense to prosecution for a violation of the
8 provisions of this Paragraph.

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

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

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

23 (3) Upon completion of the term of imprisonment imposed in accordance
24 with Paragraph (2) of this Subsection, the offender shall be monitored by the
25 Department of Public Safety and Corrections through the use of electronic
26 monitoring equipment for the remainder of his natural life.

27 (4) Unless it is determined by the Department of Public Safety and
28 Corrections, pursuant to rules adopted in accordance with the provisions of this
29 Subsection, that a sexual offender is unable to pay all or any portion of such costs,

1 each sexual offender to be electronically monitored shall pay the cost of such
2 monitoring.

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

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

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

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

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

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

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____