

SENATE FLOOR AMENDMENTS

2023 Regular Session

Amendments proposed by Senator Foil to Engrossed Senate Bill No. 215 by Senator Barrow

1 AMENDMENT NO. 1

2 On page 1, delete lines 2 through 9 and insert the following:

3 “To amend and reenact Code of Evidence Article 412.4(A) and (B) and to enact R.S. 14:18.1
4 and Code of Criminal Procedure Article 894.1(G), relative to criminal culpability;
5 to provide a duress defense for victims of domestic abuse, sexual assault, or
6 trafficking; to provide for sentencing mitigation for victims of domestic abuse,
7 sexual assault, or human trafficking; and to provide for related matters.”

8 AMENDMENT NO. 2

9 On page 1, delete lines 11 through 17 and insert the following:

10 "Section 1. R.S. 14:18.1 is hereby enacted to read as follows:

11 **§18.1. Victims of domestic abuse, sexual assault, or trafficking; duress defense**

12 **A. An offender’s conduct shall be deemed justifiable, although otherwise**
13 **criminal, if he or she proves all of the following at trial by a preponderance of**
14 **the evidence:**

15 **(1) The offender is not charged with a crime of violence as defined in R.S.**
16 **14:2(B), a sex offense as defined in R.S. 15:541, or cruelty to juveniles as defined**
17 **in R.S. 14:93.**

18 **(2) The offender is a victim of domestic abuse as defined by R.S. 46:2132**
19 **involving serious bodily injury, sexual assault as defined by R.S. 46:2184, or**
20 **trafficking as defined by R.S. 14:46.2 or 46.3.**

21 **(3) The offender reasonably believed that the perpetrator of the domestic**
22 **abuse, sexual assault, or trafficking would inflict death, great bodily harm, or**
23 **sexual assault upon the offender or upon another if the offender did not commit**
24 **the offense.**

25 **(4) The offender reasonably believed that committing the offense was**
26 **necessary to prevent the death, great bodily harm, or sexual assault.**

27 **B. An offender who is a victim of domestic abuse, sexual assault, or**
28 **trafficking shall have no duty to escape or to attempt to escape a relationship**
29 **or shared residence with the perpetrator of the domestic abuse, sexual assault,**
30 **or trafficking prior to or during the conduct at issue in order to assert the**
31 **defense provided for in this Section. However, a finder of fact shall consider**
32 **whether the offender reasonably could have escaped in addition to whether the**
33 **offender reasonably could have taken any other actions instead of committing**
34 **the offense in determining whether the offender has proven the applicability of**
35 **the defense provided for in this Section.**

36 **C. Subject to the provisions of Chapter 7 of the Code of Evidence and**
37 **any other applicable provisions of law, expert testimony on the effects,**
38 **dynamics, and circumstances of entrapment and coercive control relative to**
39 **domestic abuse, sexual assault, or trafficking may be admissible to support or**
40 **rebut the defense provided for in this Section.**

41 **D. Nothing in this Section shall be construed as limiting the applicability**
42 **of any other affirmative defense provided for by law.**

43 **E. An offender who intends to raise the defense provided for in this**
44 **Section shall, no later than forty-five days prior to trial, notify the district**
45 **attorney in writing of such intention and file a copy of such notice with the**
46 **clerk. The court may, for cause shown, allow late filing of the notice or grant**
47 **additional time to the parties to prepare for trial or make such other orders as**
48 **may be appropriate. Upon the failure of the offender to provide the notice**
49 **required by this Subsection, the court shall prohibit the offender from raising**

the defense provided for in this Section, but such prohibition shall not limit the right of the offender to testify in his own behalf.

Section 2. Code of Criminal Procedure Art. 894.1(G) is hereby enacted to read as follows:

Art. 894.1. Sentencing guidelines; generally

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G. If the court finds clear and convincing evidence both that the offender is a victim of domestic abuse as defined by R.S. 46:2132, sexual assault as defined by R.S. 46:2184, or trafficking as defined by R.S. 14:46.2 or 46.3, and also that there was a rational, causal, and temporally proximate connection involving a continuous sequence of events between the offense and the offender’s victimization, the court shall order a presentence investigation, shall consider the effects of the domestic abuse, sexual assault, or trafficking upon the offender in sentencing the offender, and shall provide written reasons for any sentence imposed. Clear and convincing evidence under this Paragraph may be considered in conjunction with all of the evidence elicited in determining whether to grant a downward departure from a mandatory minimum sentence under State v. Dorthey, 623 So.2d 1276 (La. 1993), and its progeny. Nothing contained herein shall be construed to overrule, expand, or extend, whether directly or by analogy, the decision reached by the Louisiana Supreme Court in State v. Dorthey, 623 So.2d 1276 (La. 1993), nor its progeny as further interpreted by the Louisiana Supreme Court.

Section 3: Code of Evidence Article 412.4(A) and (B) are hereby amended and reenacted to read as follows:

Art. 412.4. Evidence of similar crimes, wrongs, or acts in domestic abuse cases and cruelty against juveniles cases; rebuttal of certain defenses

A.(1). When an accused is charged with a crime involving abusive behavior against a family member, household member, or dating partner or with acts which constitute cruelty involving a victim who was under the age of seventeen at the time of the offense, evidence of the accused's commission of another crime, wrong, or act involving assaultive behavior against a family member, household member, or dating partner or acts which constitute cruelty involving a victim who was under the age of seventeen at the time of the offense, may be admissible and may be considered for its bearing on any matter to which it is relevant, subject to the balancing test provided in Article 403.

(2) When an accused has raised the affirmative defense provided for in R.S. 14:18.1, evidence of the accused’s commission of any crime, wrong, or act involving assaultive behavior against any of the following persons may be admissible and may be considered for its bearing on rebutting such defense or on any matter to which it is relevant, subject to the balancing test provided in Code of Evidence Article 403:

(a) The alleged perpetrator of the domestic abuse, sexual assault, or trafficking against the offender as provided in R.S. 14:18.1.

(b) Any family member, household member, or dating partner of the offender.

(c) Any other person if such evidence is relevant to rebut such defenses, subject to the balancing test provided in Code of Evidence Article 403.

B. In a case in which the state intends to offer evidence under the provisions of **Paragraph A(1) of** this Article, the prosecution shall, upon request of the accused, provide reasonable notice in advance of trial of the nature of any such evidence it intends to introduce at trial for such purposes. **However, notice shall not be required prior to introducing evidence under the provisions of Paragraph A(2) of this Article.**

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AMENDMENT NO. 3

Delete pages 2 through 7

- 1 AMENDMENT NO. 4
- 2 On page 8, delete line 1