

2023 Regular Session

SENATE BILL NO. 215

BY SENATOR BARROW

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CRIME/PUNISHMENT. Provides justification defense to domestic violence victim-defendants. (8/1/23)

AN ACT

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

Be it enacted by the Legislature of Louisiana:

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

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

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

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

(2) The offender is a victim of domestic abuse as defined by R.S. 46:2132 involving serious bodily injury, sexual assault as defined by R.S. 46:2184, or

1 trafficking as defined by R.S. 14:46.2 or 46.3.

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

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

8 B. An offender who is a victim of domestic abuse, sexual assault, or
9 trafficking shall have no duty to escape or to attempt to escape a relationship
10 or shared residence with the perpetrator of the domestic abuse, sexual assault,
11 or trafficking prior to or during the conduct at issue in order to assert the
12 defense provided for in this Section. However, a finder of fact shall consider
13 whether the offender reasonably could have escaped in addition to whether the
14 offender reasonably could have taken any other actions instead of committing
15 the offense in determining whether the offender has proven the applicability of
16 the defense provided for in this Section.

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

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

24 E. An offender who intends to raise the defense provided for in this
25 Section shall, no later than forty-five days prior to trial, notify the district
26 attorney in writing of such intention and file a copy of such notice with the
27 clerk. The court may, for cause shown, allow late filing of the notice or grant
28 additional time to the parties to prepare for trial or make such other orders as
29 may be appropriate. Upon the failure of the offender to provide the notice

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

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

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

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

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

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

26 * * *

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Whitney Kauffeld.

DIGEST

SB 215 Reengrossed

2023 Regular Session

Barrow

Proposed law determines that a defendant's conduct is justifiable, though otherwise criminal conduct, if the following are proven:

- (1) The crime is not a crime of violence, a sex offense, or cruelty to juveniles.
- (2) The defendant is a victim of domestic violence, sexual assault or trafficking.
- (3) The defendant believed the victim would inflict death, great bodily harm or sexual assault upon the defendant if the defendant did not commit the offense.
- (4) The defendant reasonably believed that committing the offense was necessary to prevent the death, great bodily harm, or sexual assault.

Proposed law further provides that the victim has no duty to escape in order to assert the defense and the failure to escape, prior failure to cooperate in the arrest or prosecution of the perpetrator, and the defendant's past sexual behavior are not admissible to rebut the justification. Proposed law further provides that the finding of fact may consider whether the defendant could have escape or taken other actions instead of committing the offense.

Proposed law permits expert testimony, in the form of expert opinion, to support or rebut a defense of whether a defendant is a victim of intimate partner violence, domestic abuse, human trafficking, or sexual assault. Proposed law further provides that a defendant must provide notice no later than 45 days prior to trial if the defendant intends to offer this defense.

Proposed law provides that the court may find by clear and convincing evidence, that the defendant is a victim of domestic abuse, sexual assault or trafficking and that there was rational, causal, and temporarily proximate connection involving a continuous sequence of events between the offense and the victimization, the court must order a pre-sentence investigation and provide written reasons for any sentence imposed.

Proposed law permits evidence of the defendant's victimization from alleged perpetrator of the domestic abuse, sexual assault or trafficking, or any family member, household member or dating partner of the defendant, or any other relevant evidence. Proposed law requires notice be given prior to the introduction of the evidence.

Effective August 1, 2023.

(Amends C.E. Art. 412.4(A) and (B); adds R.S. 14:18.1, C.Cr.P. Art. 894.1(G))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary C to the original bill

1. Change eligibility of victim who may assert justification defense.
2. Delete language allowing for retroactivity of justification defense.
3. Clarify that victims of human trafficking are eligible to assert defense.

4. Add language for post-conviction relief in certain circumstances.

Senate Floor Amendments to engrossed bill

1. Change provision regarding eligibility of victim who may assert justification defense.
2. Delete language allowing for retroactivity of justification defense.
3. Delete language for post-conviction relief in certain circumstances.
4. Change language regarding sentencing limits.
5. Add requirement for pre-sentence investigation.
6. Add language to allow evidence from certain persons.
7. Deletes provision that proposed law ceases to be effective on December 31, 2027.