

Regular Session, 2014

SENATE BILL NO. 333

BY SENATOR JOHNS

CRIMINAL RECORDS. Provides relative to crime against nature and incest. (gov sig)

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AN ACT

To amend and reenact Code of Criminal Procedure Articles 465(A)(26), 571.1, and 648(B)(3)(g) and (h), R.S. 14:2(B)(40), 43.6(A) and (B)(1), 89, and 89.1, and R.S. 15:536(A), 537(A) and (B), 541(2)(j) and (l) and (24)(a), 542(A)(3)(f) and (g), and 571.3(B)(4)(d) and (e), and to repeal R.S. 14:78 and 78.1 and R.S. 15:541(25)(d) and 571.3(B)(3)(i) and (j), relative to sex offenses affecting the family; to provide relative to the crimes of incest and crime against nature; to place the elements of the crimes of incest and aggravated incest within the definitions of crime against nature and aggravated crime against nature, respectively; to provide relative to penalties; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Criminal Procedure Articles 465(A)(26), 571.1, and 648(B)(3)(g) and (h) are hereby amended and reenacted to read as follows:

Art. 465. Specific indictment forms

A. The following forms of charging offenses may be used, but any other forms authorized by this title may also be used:

\* \* \*



1 pending such civil commitment proceedings. If the defendant is committed to a  
2 treatment facility pursuant to Title 28 of the Louisiana Revised Statutes of 1950, the  
3 director of the institution designated for the patient's treatment shall, in writing,  
4 notify the court and the district attorney when the patient is to be discharged or  
5 conditionally discharged, as long as the charges are pending. If not dismissed without  
6 prejudice at an earlier trial, charges against an unrestorable incompetent defendant  
7 shall be dismissed on the date upon which his sentence would have expired had he  
8 been convicted and received the maximum sentence for the crime charged, or on the  
9 date five years from the date of his arrest for such charges, whichever is sooner,  
10 except for the following charges:

11 \* \* \*

12 (g) ~~R.S. 14:78 (incest)~~ **R.S. 14:89(A)(2) (crime against nature involving**  
13 **ascendants or descendants).**

14 (h) ~~R.S. 14:78.1 (aggravated incest)~~ **R.S. 14:89.1(B) (aggravated crime**  
15 **against nature involving biological, step, or adoptive relatives).**

16 \* \* \*

17 Section 2. R.S. 14:2(B)(40), 43.6(A) and (B)(1), 89, and 89.1 are hereby amended  
18 and reenacted to read as follows:

19 §2. Definitions

20 \* \* \*

21 B. In this Code, "crime of violence" means an offense that has, as an element,  
22 the use, attempted use, or threatened use of physical force against the person or  
23 property of another, and that, by its very nature, involves a substantial risk that  
24 physical force against the person or property of another may be used in the course  
25 of committing the offense or an offense that involves the possession or use of a  
26 dangerous weapon. The following enumerated offenses and attempts to commit any  
27 of them are included as "crimes of violence":

28 \* \* \*

29 (40) ~~Aggravated incest~~ **Aggravated crime against nature involving**



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

9           B. Penalties. (1)~~(a)~~ Whoever violates the provisions of ~~this Section~~  
10           Paragraph (A)(1) of this Section shall be fined not more than two thousand dollars,  
11           imprisoned, with or without hard labor, for not more than five years, or both.

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

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

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

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

28           C. It shall be an affirmative defense to prosecution for a violation of ~~this~~  
29           Section Paragraph (A)(1) of this Section that, during the time of the alleged

1 commission of the offense, the defendant was a victim of trafficking of children for  
2 sexual purposes as provided in R.S. 14:46.3(E).

3 §89.1. Aggravated crime against nature

4 A. Aggravated crime against nature is crime against nature committed under  
5 any one or more of the following circumstances:

6 (1) When the victim resists the act to the utmost, but such resistance is  
7 overcome by force;

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

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

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

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

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

22 **B. Aggravated crime against nature is engaging in any of the following**  
23 **with a person who is under eighteen years of age and who is known to the**  
24 **offender to be related to the offender as a child, grandchild of any degree,**  
25 **brother, sister, half-brother, half-sister, uncle, aunt, nephew, or niece, whether**  
26 **biological, step, or adoptive relatives:**

27 **(1) Sexual intercourse, sexual battery, second degree sexual battery,**  
28 **carnal knowledge of a juvenile, indecent behavior with juveniles, pornography**  
29 **involving juveniles, molestation of a juvenile or a person with a physical or**

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

4 (2) 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 (3) Consent is not a defense under this Paragraph.

8 ~~B.C.~~ Whoever commits the crime of aggravated crime against nature violates  
9 the provisions of Subsection A of this Section shall be imprisoned at hard labor for  
10 not less than three nor more than fifteen years, such prison sentence to be without  
11 benefit of suspension of sentence, probation or parole.

12 D.(1) Except as provided in Paragraph (2) of this Subsection, whoever  
13 violates the provisions of Subsection B of this Section shall be fined an amount  
14 not to exceed fifty thousand dollars, or imprisoned, with or without hard labor,  
15 for a term not less than five years nor more than twenty years, or both.

16 (2)(a) Whoever violates the provisions of Subsection B of this Section  
17 when the victim is under the age of thirteen years and the offender is seventeen  
18 years of age or older shall be punished by imprisonment at hard labor for not  
19 less than twenty-five years nor more than ninety-nine years. At least twenty-five  
20 years of the sentence imposed shall be served without benefit of parole,  
21 probation, or suspension of sentence.

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

26 (ii) Unless it is determined by the department, pursuant to rules adopted  
27 in accordance with the provisions of this Subsection, that a sexual offender is  
28 unable to pay all or any portion of such costs, each sexual offender to be  
29 electronically monitored shall pay the cost of such monitoring.

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

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

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

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

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

26           Section 3. R.S. 15:536(A), 537(A) and (B), 541(2)(j) and (l) and (24)(a),  
27           542(A)(3)(f) and (g), and 571.3(B)(4)(d) and (e) are hereby amended and reenacted to read  
28           as follows:

29           §536. Definitions





1 attempted perpetration of, or conspiracy to commit, any of the following:

2 \* \* \*

3 (j) ~~Aggravated incest (R.S. 14:78.1) involving sexual intercourse, second~~  
4 ~~degree sexual battery, oral sexual battery, or when prosecuted under the provisions~~  
5 ~~of R.S. 14:78.1(D)(2)~~ **Aggravated crime against nature involving biological, step,**  
6 **or adoptive relatives (R.S. 14:89.1(B)) involving sexual intercourse, second**  
7 **degree sexual battery, oral sexual battery, or when prosecuted under the**  
8 **provisions of R.S. 89.1(D)(2).**

9 \* \* \*

10 (l) Aggravated crime against nature (R.S. 14:89.1(A)).

11 \* \* \*

12 (24)(a) "Sex offense" means deferred adjudication, adjudication withheld, or  
13 conviction for the perpetration or attempted perpetration of or conspiracy to commit  
14 human trafficking when prosecuted under the provisions of R.S. 14:46.2(B)(2) or (3),  
15 R.S. 14:46.3 (trafficking of children for sexual purposes), ~~R.S. 14:78 (incest), R.S.~~  
16 ~~14:78.1 (aggravated incest),~~ R.S. 14:89 (crime against nature), R.S. 14:89.1  
17 (aggravated crime against nature), R.S. 14:89.2(B)(3) (crime against nature by  
18 solicitation), R.S. 14:80 (felony carnal knowledge of a juvenile), R.S. 14:81  
19 (indecent behavior with juveniles), R.S.14:81.1 (pornography involving juveniles),  
20 R.S. 14:81.2 (molestation of a juvenile or a person with a physical or mental  
21 disability), R.S. 14:81.3 (computer-aided solicitation of a minor), R.S. 14:81.4  
22 (prohibited sexual conduct between an educator and student), R.S. 14:92(A)(7)  
23 (contributing to the delinquency of juveniles), R.S. 14:93.5 (sexual battery of the  
24 infirm), R.S. 14:106(A)(5) (obscenity by solicitation of a person under the age of  
25 seventeen), R.S. 14:283 (video voyeurism), R.S. 14:41 (rape), R.S. 14:42 (aggravated  
26 rape), R.S. 14:42.1 (forcible rape), R.S. 14:43 (simple rape), R.S. 14:43.1 (sexual  
27 battery), R.S. 14:43.2 (second degree sexual battery), R.S. 14:43.3 (oral sexual  
28 battery), R.S. 14:43.5 (intentional exposure to AIDS virus), or a second or  
29 subsequent conviction of R.S. 14:283.1 (voyeurism), committed on or after June 18,

1 1992, or committed prior to June 18, 1992, if the person, as a result of the offense,  
 2 is under the custody of the Department of Public Safety and Corrections on or after  
 3 June 18, 1992. A conviction for any offense provided in this definition includes a  
 4 conviction for the offense under the laws of another state, or military, territorial,  
 5 foreign, tribal, or federal law which is equivalent to an offense provided for in this  
 6 Chapter, unless the tribal court or foreign conviction was not obtained with sufficient  
 7 safeguards for fundamental fairness and due process for the accused as provided by  
 8 the federal guidelines adopted pursuant to the Adam Walsh Child Protection and  
 9 Safety Act of 2006.

10 \* \* \*

11 §542. Registration of sex offenders and child predators

12 A. The following persons shall be required to register and provide  
 13 notification as a sex offender or child predator in accordance with the provisions of  
 14 this Chapter:

15 \* \* \*

16 (3) Any juvenile, who has attained the age of fourteen years at the time of  
 17 commission of the offense, who has been adjudicated delinquent based upon the  
 18 perpetration, attempted perpetration, or conspiracy to commit any of the following  
 19 offenses:

20 \* \* \*

21 (f) ~~Aggravated incest~~ **Aggravated crime against nature involving**  
 22 **biological, step, or adoptive relatives (R.S. 14:89.1(B))** involving circumstances  
 23 defined as an "aggravated offense" (~~R.S. 14:78.1~~).

24 (g) Aggravated crime against nature (R.S. 14:89.1(A)).

25 \* \* \*

26 §571.3. Diminution of sentence for good behavior

27 \* \* \*

28 B.(1)

\* \* \*

29 \* \* \*

1 (4) Diminution of sentence shall not be allowed an inmate in the custody of  
2 the Department of Public Safety and Corrections if the inmate has been convicted  
3 one or more times under the laws of this state, any other state, or the federal  
4 government of any one or more of the following crimes or attempts to commit any  
5 of the following crimes:

6 \* \* \*

7 (d) ~~Incest~~ **Crime against nature involving ascendants or descendants.**

8 (e) ~~Aggravated incest~~ **Aggravated crime against nature involving**  
9 **biological, step, or adoptive relatives.**

10 \* \* \*

11 Section 4. R.S. 14:78 and 78.1 and R.S. 15:541(25)(d) and 571.3(B)(3)(i) and (j) are  
12 hereby repealed in their entirety.

13 Section 5. This Act shall become effective upon signature by the governor or, if not  
14 signed by the governor, upon expiration of the time for bills to become law without signature  
15 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
16 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
17 effective on the day following such approval.

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The original instrument and the following digest, which constitutes no part  
of the legislative instrument, were prepared by Alden A. Clement, Jr.

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DIGEST

Johns (SB 333)

Present law provides relative to the crimes of crime against nature, aggravated crime against nature, incest, and aggravated incest. Present law defines and provides penalties relative to these present law crimes.

Proposed law repeals the named present law crimes of "incest" and "aggravated incest" and places their elements and penalties under "crime against nature" and "aggravated crime against nature", respectively.

Proposed law otherwise retains all present law relative to the crimes of incest and aggravated incest.

Present law references the present law crimes of incest and aggravated incest in various provisions of present law relative to the time limitation for prosecuting certain sex offenses, criminal procedure, determination of mental capacity or incapacity, sentencing of sex offenders, registration of sex offenders, and diminution of sentences.

Proposed law changes these present law references from "incest" and "aggravated incest"

to "crime against nature" or "aggravated crime against nature" as appropriate in the context of present law.

Proposed law otherwise retains present law.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends C.Cr.P. Art. 465(A)(26), 571.1, and 648(B)(3)(g) and (h), R.S. 14:2(B)(40), 43.6(A) and (B)(1), 89, and 89.1, and R.S. 15:536(A), 537(A) and (B), 541(2)(j) and (l) and (24)(a), 542(A)(3)(f) and (g), and 571.3(B)(4)(d) and (e); repeals R.S. 14:78 and 78.1 and R.S. 15:541(25)(d) and 571.3(B)(3)(i) and (j))