

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 Children's Code Article 1015(3)(c), Code of Criminal Procedure Articles 465(A)(16) and (26), 571.1, and 648(B)(3)(g), R.S. 13:5713(F), R.S. 14:43.6(A) and (B)(1), 89, and 89.1, and R.S. 15:536(A), 537, 541(2)(j) and (l) and (24)(a), 542(A)(3)(f) and (g), and 571.3(B)(4)(d) and (e), R.S. 40:1299.34.5(B)(3), (C), and (E), 1299.35.2(D)(2)(d) and (E), 1299.35.7(B) and (D), and 1300.13(E)(6), and to repeal Children's Code Articles 855(B)(7)(f) and 884.1(A)(6), Code of Criminal Procedure Article 648(B)(3)(h), R.S. 14:2(B)(40), 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. Article 1015(3)(c) of the Children's Code is hereby amended and reenacted to read as follows:

Art. 1015. Grounds

1 The grounds for termination of parental rights are:

2 * * *

3 (3) Misconduct of the parent toward this child or any other child of the
4 parent or any other child which constitutes extreme abuse, cruel and inhuman
5 treatment, or grossly negligent behavior below a reasonable standard of human
6 decency, including but not limited to the conviction, commission, aiding or abetting,
7 attempting, conspiring, or soliciting to commit any of the following:

8 * * *

9 (c) Aggravated incest **crime against nature as provided in R.S. 14:89.1(B).**

10 * * *

11 Section 2. Code of Criminal Procedure Articles 465(A)(16) and (26), 571.1, and
12 648(B)(3)(g) are hereby amended and reenacted to read as follows:

13 Art. 465. Specific indictment forms

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

16 * * *

17 16. Crime Against Nature - A.B. committed crime against nature with C.D.,
18 **his** _____ **(state relationship, if any) by**
19 _____(describe the act).

20 * * *

21 26. Incest **Aggravated Crime Against Nature** - A.B. committed incest
22 **aggravated crime against nature** with C.D., his _____ (state
23 relationship, **if any**) **by** _____ **(describe the act).**

24 * * *

25 Art. 571.1. Time limitation for certain sex offenses

26 Except as provided by Article 572 of this Chapter, the time within which to
27 institute prosecution of the following sex offenses, regardless of whether the crime
28 involves force, serious physical injury, death, or is punishable by imprisonment at
29 hard labor shall be thirty years: sexual battery (R.S. 14:43.1), second degree sexual

1 battery (R.S. 14:43.2), oral sexual battery (R.S. 14:43.3), human trafficking (R.S.
 2 14:46.2(B)(2) or (3)), trafficking of children for sexual purposes (R.S. 14:46.3),
 3 felony carnal knowledge of a juvenile (R.S. 14:80), indecent behavior with juveniles
 4 (R.S. 14:81), pornography involving juveniles (R.S. 14:81.1), molestation of a
 5 juvenile (R.S. 14:81.2), prostitution of persons under eighteen (R.S. 14:82.1),
 6 enticing persons into prostitution (R.S. 14:86), crime against nature (R.S. 14:89),
 7 aggravated crime against nature (R.S. 14:89.1), crime against nature by solicitation
 8 (R.S. 14:89.2(B)(3)), ~~incest (R.S. 14:78), or aggravated incest (R.S. 14:78.1)~~ which
 9 **that** involves a victim under seventeen years of age. This thirty-year period begins
 10 to run when the victim attains the age of eighteen.

* * *

12 Art. 648. Procedure after determination of mental capacity or incapacity

* * *

14 B. * * *

15 (3) If, after the hearing, the court determines that the incompetent defendant
 16 is unlikely in the foreseeable future to be capable of standing trial, the court shall
 17 order the defendant released or remanded to the custody of the Department of Health
 18 and Hospitals which, within ten days exclusive of weekends and holidays, may
 19 institute civil commitment proceedings pursuant to Title 28 of the Louisiana Revised
 20 Statutes of 1950, or release the defendant. The defendant shall remain in custody
 21 pending such civil commitment proceedings. If the defendant is committed to a
 22 treatment facility pursuant to Title 28 of the Louisiana Revised Statutes of 1950, the
 23 director of the institution designated for the patient's treatment shall, in writing,
 24 notify the court and the district attorney when the patient is to be discharged or
 25 conditionally discharged, as long as the charges are pending. If not dismissed without
 26 prejudice at an earlier trial, charges against an unrestorable incompetent defendant
 27 shall be dismissed on the date upon which his sentence would have expired had he
 28 been convicted and received the maximum sentence for the crime charged, or on the
 29 date five years from the date of his arrest for such charges, whichever is sooner,

1 according to a schedule of administration monitored by the Department of Public
2 Safety and Corrections.

3 * * *

4 §89. Crime against nature

5 A. Crime against nature **includes any of the following:**

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

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

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

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

28 ~~(3)~~(c) Whoever violates the provisions of **Paragraph (A)(1) of this Section**
29 with a person under the age of fourteen years shall be fined not more than seventy-

1 five thousand dollars, imprisoned at hard labor for not less than twenty-five years nor
2 more than fifty years, or both.

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

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

11 C. It shall be an affirmative defense to prosecution for a violation of
12 **Paragraph (A)(1) of** this Section that, during the time of the alleged commission of
13 the offense, the defendant was a victim of trafficking of children for sexual purposes
14 as provided in R.S. 14:46.3(E).

15 §89.1. Aggravated crime against nature

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

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

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

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

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

27 (5) When the victim is incapable of resisting or of understanding the nature
28 of the act, by reason of stupor or abnormal condition of mind produced by a narcotic
29 or anesthetic agent, administered by or with the privity of the offender; or when he

1 has such incapacity, by reason of a stupor or abnormal condition of mind from any
2 cause, and the offender knew or should have known of such incapacity; or

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

5 **B.(1) Aggravated crime against nature is engaging in any of the following**
6 **with a person who is under eighteen years of age and who is known to the**
7 **offender to be related to the offender as a child, grandchild of any degree,**
8 **brother, sister, half-brother, half-sister, uncle, aunt, nephew, or niece, whether**
9 **biological, step, or adoptive relatives:**

10 (a) **Sexual intercourse, sexual battery, second degree sexual battery,**
11 **carnal knowledge of a juvenile, indecent behavior with juveniles, pornography**
12 **involving juveniles, molestation of a juvenile or a person with a physical or**
13 **mental disability, crime against nature, cruelty to juveniles, parent enticing a**
14 **child into prostitution, or any other involvement of a child in sexual activity**
15 **constituting a crime under the laws of this state.**

16 (b) **Any lewd fondling or touching of the person of either the child or the**
17 **offender, done or submitted to with the intent to arouse or to satisfy the sexual**
18 **desires of either the child, the offender, or both.**

19 **(2) Consent is not a defense under this Subsection.**

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

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

28 **(2)(a) Whoever violates the provisions of Subsection B of this Section**
29 **when the victim is under the age of thirteen years and the offender is seventeen**

1 years of age or older shall be punished by imprisonment at hard labor for not
2 less than twenty-five years nor more than ninety-nine years. At least twenty-five
3 years of the sentence imposed shall be served without benefit of parole,
4 probation, or suspension of sentence.

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

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

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

17 (iv) The department shall develop, adopt, and promulgate rules in the
18 manner provided in the Administrative Procedure Act that provide for the
19 payment of such costs. Such rules shall contain specific guidelines that shall be
20 used to determine the ability of the offender to pay the required costs and shall
21 establish the reasonable costs to be charged. Such rules may provide for a
22 sliding scale of payment so that an offender who is able to pay a portion, but not
23 all, of such costs may be required to pay such portion.

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

28 (b) The amount, method, and time of payment shall be determined by the
29 court either by ordering that documentation of the offender's financial

1 resources and future ability to pay restitution and of the victim's pecuniary loss
 2 submitted by the victim be included in the presentence investigation and report,
 3 or the court may receive evidence of the offender's ability to pay and the
 4 victim's loss at the time of sentencing.

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

9 Section 5. R.S. 15:536(A), 537, 541(2)(j) and (l) and (24)(a), 542(A)(3)(f) and (g),
 10 and 571.3(B)(4)(d) and (e) are hereby amended and reenacted to read as follows:

11 §536. Definitions

12 A. For purposes of this Chapter, "sexual offender" means a person who has
 13 violated ~~R.S. 14:78 (incest), R.S. 14:78.1 (aggravated incest)~~, R.S. 14:89 (crime
 14 against nature), R.S. 14:89.1 (aggravated crime against nature), R.S. 14:93.5 (sexual
 15 battery of the infirm) or any provision of Subpart C of Part II, or Subpart A(1) of Part
 16 V, of Chapter 1 of Title 14 of the Louisiana Revised Statutes of 1950.

17 * * *

18 §537. Sentencing of sexual offenders; serial sexual offenders

19 A. If a person is convicted of or pleads guilty to, or where adjudication has
 20 been deferred or withheld for a violation of ~~R.S. 14:78 (incest), R.S. 14:78.1~~
 21 ~~(aggravated incest)~~, R.S. 14:80 (felony carnal knowledge of a juvenile), R.S. 14:81
 22 (indecent behavior with juveniles), R.S. 14:81.1 (pornography involving juveniles),
 23 R.S. 14:81.2 (molestation of a juvenile or a person with a physical or mental
 24 disability), R.S. 14:81.3 (computer-aided solicitation of a minor), R.S. 14:89 (crime
 25 against nature), R.S. 14:89.1 (aggravated crime against nature), R.S. 14:93.5 (sexual
 26 battery of the infirm), or any provision of Subpart C of Part II of Chapter 1 of Title
 27 14 of the Louisiana Revised Statutes of 1950, and is sentenced to imprisonment for
 28 a stated number of years or months, the person shall not be eligible for diminution
 29 of sentence for good behavior.

1 (indecent behavior with juveniles), R.S.14:81.1 (pornography involving juveniles),
 2 R.S. 14:81.2 (molestation of a juvenile or a person with a physical or mental
 3 disability), R.S. 14:81.3 (computer-aided solicitation of a minor), R.S. 14:81.4
 4 (prohibited sexual conduct between an educator and student), R.S. 14:92(A)(7)
 5 (contributing to the delinquency of juveniles), R.S. 14:93.5 (sexual battery of the
 6 infirm), R.S. 14:106(A)(5) (obscenity by solicitation of a person under the age of
 7 seventeen), R.S. 14:283 (video voyeurism), R.S. 14:41 (rape), R.S. 14:42 (aggravated
 8 rape), R.S. 14:42.1 (forcible rape), R.S. 14:43 (simple rape), R.S. 14:43.1 (sexual
 9 battery), R.S. 14:43.2 (second degree sexual battery), R.S. 14:43.3 (oral sexual
 10 battery), R.S. 14:43.5 (intentional exposure to AIDS virus), or a second or
 11 subsequent conviction of R.S. 14:283.1 (voyeurism), committed on or after June 18,
 12 1992, or committed prior to June 18, 1992, if the person, as a result of the offense,
 13 is under the custody of the Department of Public Safety and Corrections on or after
 14 June 18, 1992. A conviction for any offense provided in this definition includes a
 15 conviction for the offense under the laws of another state, or military, territorial,
 16 foreign, tribal, or federal law which is equivalent to an offense provided for in this
 17 Chapter, unless the tribal court or foreign conviction was not obtained with sufficient
 18 safeguards for fundamental fairness and due process for the accused as provided by
 19 the federal guidelines adopted pursuant to the Adam Walsh Child Protection and
 20 Safety Act of 2006.

21 * * *

22 §542. Registration of sex offenders and child predators

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

26 * * *

27 (3) Any juvenile, who has attained the age of fourteen years at the time of
 28 commission of the offense, who has been adjudicated delinquent based upon the
 29 perpetration, attempted perpetration, or conspiracy to commit any of the following

1 offenses:

2 * * *

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

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

7 * * *

8 §571.3. Diminution of sentence for good behavior

9 * * *

10 B.(1) * * *

11 * * *

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

17 * * *

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

19 (e) ~~Aggravated incest~~ **Aggravated crime against nature involving certain**
20 **biological, step, or adoptive relatives.**

21 * * *

22 Section 6. R.S. 40:1299.34.5(B)(3), (C), and (E), 1299.35.2(D)(2)(d) and (E),
23 1299.35.7(B) and (D), and 1300.13(E)(6) are hereby amended and reenacted to read as
24 follows:

25 §1299.34.5. Use of public funds

26 * * *

27 B. Notwithstanding any other provision of law to the contrary, no public
28 funds made available to any institution, board, commission, department, agency,
29 official, or employee of the state of Louisiana, or of any local political subdivision

1 anesthesia or medication in preparation for the abortion on the woman, the physician
2 who is to perform the abortion or a qualified person who is the physician's agent
3 shall comply with all of the following requirements:

4 * * *

5 (d) Prior to the ultrasound, obtain from the pregnant woman a copy of a
6 completed, signed, and dated election form. The election form shall be produced and
7 made available by the department, and shall state as follows:

8 "Ultrasound Before Abortion Notice and Election Form

9 Louisiana law requires an ultrasound examination prior to the performance of an
10 abortion. By signing below, I certify that I understand the following:

- 11 (1) I have the option to look at or look away from the ultrasound display at any
12 time.
- 13 (2) I have the option to listen to the heartbeat of the unborn child that is required
14 to be made audible unless I decline by initialing here: _____.
- 15 (3) I am required by law to hear an oral explanation of the ultrasound images,
16 unless I certify below that I am pregnant due to an act of rape or ~~incest~~ **crime**
17 **against nature as provided in R.S. 14:89(A)(2).**
- 18 (4) I have the option to ask and receive answers to any questions about the
19 images of the unborn child.
- 20 (5) I have the option to ask for an ultrasound photographic print depicting the
21 unborn child.

22 _____
23 Signature Date

24 OPTION FOR WOMEN WHO HAVE FILED LAW ENFORCEMENT REPORTS:

25 I certify that I have reported an act of rape or ~~incest~~ **crime against nature as**
26 **provided in R.S. 14:89(A)(2)** to law enforcement officials, and that I decline to hear
27 an oral explanation of the ultrasound images.

28 _____
29 Signature Date "

* * *

E. Pregnant rape survivors or victims of ~~incest~~ **crime against nature as provided in R.S. 14:89(A)(2)** who have reported the act to law enforcement officials shall have the opportunity to opt out of the oral explanation provisions of Subparagraph ~~Ð(D)~~(2)(b) of this Section, in addition to having the same options to view or listen to the required medical information as provided in Paragraph ~~Ð(D)~~(3) of this Section.

* * *

§1299.35.7. Abortion sought due to rape or ~~incest~~ **crime against nature**; reporting and certification

* * *

B. Whenever an abortion is being sought pursuant to R.S. 40:1299.34.5 to terminate a pregnancy resulting from an alleged act of ~~incest~~ **crime against nature as provided in R.S. 14:89(A)(2)**, prior to the abortion all of the following requirements shall be met:

(1) The victim of ~~incest~~ **crime against nature as provided in R.S. 14:89(A)(2)** shall report the act ~~of incest~~ to a law enforcement official unless the treating physician certifies in writing that in the physician's professional opinion the victim was too physically or psychologically incapacitated to report the ~~incest act~~.

(2) The victim certifies that the pregnancy is the result of ~~incest~~ **crime against nature as provided in R.S. 14:89(A)(2)**, which certificate shall be witnessed by the treating physician.

* * *

D. Whenever an abortion is being sought pursuant to R.S. 40:1299.34.5 to terminate a pregnancy resulting from an alleged act of rape or ~~incest~~ **crime against nature as provided in R.S. 14:89(A)(2)**, the victim may request spiritual counseling and shall be offered the same informed consent information, without the twenty-four-hour delay, contained in R.S. 40:1299.35.6(B), prior to the performance of the abortion.

* * *

§1300.13. HIV-related testing; consent; exceptions

* * *

E. The provisions of Subsections A through D **of this Section** shall not apply to the performance of an HIV-related test:

* * *

(6) On any person who has been arrested, indicted, or convicted for the crimes of aggravated rape, forcible rape, simple rape, or ~~incest~~ **crime against nature as provided in R.S. 14:89(A)(2)** when required by a court to undergo an HIV-related test.

* * *

Section 7. Children's Code Articles 855(B)(7)(f) and 884.1(A)(6), Code of Criminal Procedure Article 648(B)(3)(h), R.S. 14:2(B)(40), 78 and 78.1 and R.S. 15:541(25)(d) and 571.3(B)(3)(i) and (j) are hereby repealed in their entirety.

Section 8. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

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

DIGEST

Johns (SB 333)

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

Proposed law repeals the named present law crimes of "incest" and "aggravated incest" and places those crimes' 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 relative to the time limitation for prosecuting certain sex offenses, sentencing and registration of sex offenders, criminal procedure, determination of mental capacity or

incapacity, diminution of sentence, grounds for termination of parental rights, a coroner's duties relative to certain crimes and crime victims, and the use of public funds for certain purposes.

Proposed law changes these references in present law from "incest" and "aggravated incest" to "crime against nature" or "aggravated crime against nature" or deletes present law in its entirety 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.Ch. Art. 1015(3)(c), C.Cr.P. Art. 465(A)(16) and (26), 571.1, and 648(B)(3)(g), R.S. 13:5713(F), R.S. 14:43.6(A) and (B)(1), 89, and 89.1, and R.S. 15:536(A), 537, 541(2)(j) and (l) and (24)(a), 542(A)(3)(f) and (g), and 571.3(B)(4)(d) and (e), R.S. 40:1299.34.5(B)(3), (C), and (E), 1299.35.2(D)(2)(d) and (E), 1299.35.7(B) and (D), and 1300.13(E)(6); repeals Ch.C. Art. 855(B)(7)(f) and 884.1(A)(6), C.Cr. P. Art. 648(B)(3)(h), R.S. 14:2(B)(40), 78 and 78.1, and R.S. 15:541(25)(d) and 571.3(B)(3)(i) and (j))

Summary of Amendments Adopted by Senate

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

1. Deletes references to "incest" and "aggravated incest" from additional provisions of present law.