

2020 Regular Session

HOUSE BILL NO. 212

BY REPRESENTATIVE MARINO

CRIME/BATTERY: Provides relative to domestic abuse

1 AN ACT  
2 To amend and reenact R.S. 14:2(B)(48) and (49), 34.9(J), (K), (L), and (M), 35.3(B)(4) and  
3 (N), and 37.7(B)(1), R.S. 46:2132(4), and Code of Evidence Article 412.4(D)(3) and  
4 (4) and to enact R.S. 14:34.9(N), (O), and (P) and 35.3(O) and (P), relative to  
5 domestic abuse; to provide relative to the crimes of domestic abuse battery and  
6 battery of a dating partner; to provide specific penalties when the battery is  
7 committed with a dangerous weapon and when committed with a dangerous weapon  
8 when the offender intentionally inflicts serious bodily injury; to designate as  
9 domestic abuse any felony crime of violence committed by one dating partner  
10 against the person of another dating partner; to amend the definition of "family  
11 member" for the crimes of domestic abuse battery and domestic abuse aggravated  
12 assault and for purposes of the Domestic Abuse Assistance Act; to amend the  
13 definitions of "family member" and "household member" for purposes of certain  
14 evidentiary provisions applicable in domestic abuse cases; and to provide for related  
15 matters.

16 Be it enacted by the Legislature of Louisiana:

17 Section 1. R.S. 14:2(B)(48) and (49), 34.9(J), (K), (L), and (M), 35.3(B)(4) and (N),  
18 and 37.7(B)(1) are hereby amended and reenacted and R.S. 14:34.9(N), (O), and (P) and  
19 35.3(O) and (P) are hereby enacted to read as follows:

1 §2. Definitions

2 \* \* \*

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

10 \* \* \*

11 (48) Domestic abuse battery punishable under R.S. 14:35.3(L), (M)(2), or  
12 (N), (O), or (P).

13 (49) Battery of a dating partner punishable under R.S. 14:34.9(L)(2) R.S.  
14 14:34.9(L), (M)(2), (N), (O), or (P).

15 \* \* \*

16 §34.9. Battery of a dating partner

17 \* \* \*

18 J. Any felony crime of violence, as defined by R.S. 14:2(B), against a person  
19 committed by one dating partner against another dating partner, shall be designated  
20 as an act of domestic abuse for consideration in any civil or criminal proceeding.

21 ~~J.K.~~ Notwithstanding any provision of law to the contrary, if the victim of  
22 the offense is pregnant and the offender knows that the victim is pregnant at the time  
23 of the commission of the offense, the offender, in addition to any other penalties  
24 imposed pursuant to this Section, shall be imprisoned at hard labor for not more than  
25 three years.

26 ~~K.L.~~ Notwithstanding any provision of law to the contrary, if the offense  
27 involves strangulation, the offender, in addition to any other penalties imposed  
28 pursuant to this Section, shall be imprisoned at hard labor for not more than three  
29 years.

1           ~~E.M.~~(1) Notwithstanding any provision of law to the contrary, if the offense  
2           is committed by burning, the offender, in addition to any other penalties imposed  
3           pursuant to this Section, shall be imprisoned at hard labor for not more than three  
4           years.

5           (2) If the burning results in serious bodily injury, the offense shall be  
6           classified as a crime of violence, and the offender, in addition to any other penalties  
7           imposed pursuant to this Section, shall be imprisoned at hard labor for not less than  
8           five nor more than fifty years without benefit of probation, parole, or suspension of  
9           sentence.

10          ~~M.N.~~ Except as provided in Paragraph ~~(L)~~(2) (M)(2) and Subsection P of this  
11          Section, if the offender intentionally inflicts serious bodily injury, the offender, in  
12          addition to any other penalties imposed pursuant to this Section, shall be imprisoned  
13          at hard labor for not more than eight years.

14          O. Except as provided in Subsection P of this Section, if the intentional use  
15          of force or violence is committed with a dangerous weapon, the offender, in addition  
16          to any other penalties imposed pursuant to this Section, shall be imprisoned at hard  
17          labor for not more than ten years.

18          P. Notwithstanding any provision of law to the contrary, if the intentional  
19          use of force or violence is committed with a dangerous weapon when the offender  
20          intentionally inflicts serious bodily injury, the offender, in addition to other penalties  
21          imposed pursuant to this Section, shall be imprisoned at hard labor for not more than  
22          fifteen years.

\*       \*       \*

§35.3. Domestic abuse battery

\*       \*       \*

B. For purposes of this Section:

\*       \*       \*

28          (4) "Family member" means spouses, former spouses, parents, children,  
29          stepparents, stepchildren, foster parents, ~~and~~ foster children, other ascendants, and

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 other descendants. "Family member" also means the other parent or foster parent of  
2 any child or foster child of the offender.

3 \* \* \*

4 N. Except as provided in Paragraph (M)(2) and Subsection P of this Section,  
5 if the offender intentionally inflicts serious bodily injury, the offender, in addition  
6 to any other penalties imposed pursuant to this Section, shall be imprisoned at hard  
7 labor for not more than eight years.

8 O. Except as provided in Subsection P of this Section, if the intentional use  
9 of force or violence is committed with a dangerous weapon, the offender, in addition  
10 to any other penalties imposed pursuant to this Section, shall be imprisoned at hard  
11 labor for not more than ten years.

12 P. Notwithstanding any provision of law to the contrary, if the intentional  
13 use of force or violence is committed with a dangerous weapon when the offender  
14 intentionally inflicts serious bodily injury, the offender, in addition to other penalties  
15 imposed pursuant to this Section, shall be imprisoned at hard labor for not more than  
16 fifteen years.

17 \* \* \*

18 §37.7. Domestic abuse aggravated assault

19 \* \* \*

20 B. For purposes of this Section:

21 (1) "Family member" means spouses, former spouses, parents, children,  
22 stepparents, stepchildren, foster parents, ~~and foster children,~~ other ascendants, and  
23 other descendants. "Family member" also means the other parent or foster parent of  
24 any child or foster child of the offender.

25 \* \* \*

26 Section 2. R.S. 46:2132(4) is hereby amended and reenacted to read as follows:

27 §2132. Definitions

28 As used in this Part:

29 \* \* \*

1 (4) "Family members" means spouses, former spouses, parents and children,  
 2 stepparents, stepchildren, foster parents, ~~and~~ foster children, other ascendants, and  
 3 other descendants. "Family member" also means the other parent or foster parent of  
 4 any child or foster child of the offender. "Household members" means any person  
 5 presently or formerly living in the same residence with the defendant and who is  
 6 involved or has been involved in a sexual or intimate relationship with the defendant  
 7 and who is seeking protection under this Part. "Dating partner" means any person  
 8 protected from violence under R.S. 46:2151 who is seeking protection under this  
 9 Part. If a parent or grandparent is being abused by an adult child, adult foster child,  
 10 or adult grandchild, the provisions of this Part shall apply to any proceeding brought  
 11 in district court.

12 Section 3. Code of Evidence Article 412.2(D)(3) and (4) are hereby amended and  
 13 reenacted to read as follows:

14 Art. 412.4. Evidence of similar crimes, wrongs, or acts in domestic abuse cases and  
 15 cruelty against juveniles cases

16 \* \* \*

17 D. For purposes of this Article:

18 \* \* \*

19 (3) "Family member" means spouses, former spouses, parents and children,  
 20 stepparents, stepchildren, foster parents, ~~and~~ foster children, other ascendants, and  
 21 other descendants. "Family member" also means the other parent or foster parent of  
 22 any child or foster child of the offender.

23 (4) "Household member" means any person ~~having reached the age of~~  
 24 ~~majority~~ presently or formerly living in the same residence with the offender ~~as a~~  
 25 ~~spouse, whether married or not~~ and who is involved or has been involved in a sexual  
 26 or intimate relationship with the offender, or any child presently or formerly living  
 27 in the same residence with the offender, or any child of the offender regardless of  
 28 where the child resides.

29 \* \* \*

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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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HB 212 Original

2020 Regular Session

Marino

**Abstract:** Provides relative to the penalties for battery of a dating partner and domestic abuse battery under certain circumstances and designates such offenses as crimes of violence; designates felony crimes of violence committed by one dating partner against another dating partner as domestic abuse; amends the definition of "family member" for certain domestic abuse offenses and for the Domestic Abuse Assistance Act; and amends the definitions of "family member" and "household member" for purposes of certain evidentiary provisions applicable in domestic abuse cases.

Present law provides for the crimes of domestic abuse battery and battery of a dating partner and provides enhanced penalties under certain circumstances including when the victim of the offense is pregnant, when the offense involves strangulation or burning, or when the offender intentionally inflicts serious bodily injury.

Proposed law retains present law and provides the following specific penalties that are applied when the crime domestic abuse battery or battery of a dating partner is committed under the following circumstances:

- (1) When the offense is committed with a dangerous weapon, in addition to any other penalties imposed, the offender shall be imprisoned at hard labor for not more than ten years.
- (2) When the offense is committed with a dangerous weapon and when the offender intentionally inflicts serious bodily injury, in addition to any other penalties imposed, the offender shall be imprisoned at hard labor for not more than 15 years.

Proposed law further adds offenses committed under the proposed law circumstances described above and domestic abuse battery and battery of a dating partner involving strangulation to the present law list of crimes of violence.

Present law provides that any felony crime of violence, as defined by present law, against a person committed by one family member or household member against another family member or household member shall be designated as an act of domestic abuse for consideration in any criminal or civil proceeding.

Proposed law retains present law and provides that such designation shall also apply to any felony crime of violence committed by one dating partner against the person of another dating partner.

For purposes of the crimes of domestic abuse battery and domestic abuse aggravated assault and for purposes of the present law Domestic Abuse Assistance Act, which provides for certain protections to victims of domestic abuse, present law defines "family member" as spouses, former spouses, parents, children, stepparents, stepchildren, foster parents, and foster children.

Proposed law expands the present law definition of "family member" for these purposes to include other ascendants and descendants and the other parent or foster parent of any child or foster child of the offender.

Present law provides that when an accused is charged with a crime involving abusive behavior against a family member, household member, or dating partner evidence of the accused's commission of another crime, wrong, or act involving assaultive behavior against a family member, household member, or dating partner may be admissible and may be considered for its bearing on any matter to which it is relevant unless its probative value is substantially outweighed by other factors including the danger of unfair prejudice, confusion of issues, or misleading the jury.

For these purposes, present law defines both of the following as follows:

- (1) "Family member" as spouses, former spouses, parents, children, stepparents, stepchildren, foster parents, and foster children.
- (2) "Household member" as including any person who has reached the age of majority and who is presently or formerly living in the same residence with the offender as a spouse, whether married or not.

Proposed law expands the present law definition of "family member" for these purposes to include other ascendants and descendants and the other parent or foster parent of any child or foster child of the offender.

Proposed law amends the present law definition of "household member" to include persons who have not reached the age of majority and, with regard to any person presently or formerly living in the same residence with the offender, to include any person who is involved or has been involved in a sexual or intimate relationship with the offender.

(Amends R.S. 14:2(B)(48) and (49), 34.9(J), (K), (L), and (M), 35.3(B)(4) and (N), and 37.7(B)(1), R.S. 46:2132(4), and C.E. Art. 412.4(D)(3) and (4); Adds R.S. 14:34.9(N), (O), and (P) and 35.3(O) and (P))