

SENATE BILL NO. 64

BY SENATORS CONNICK AND BARROW AND REPRESENTATIVES CARRIER,  
HORTON, ILLG, THOMPSON AND VILLIO

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AN ACT

To amend and reenact R.S. 14:2(B)(8), (29) and (40), 41(B), 42(A)(6) and (C), 43.2(A)(1) and (2), 43.3(A)(1), 44.1(A)(3), 44.2(B)(2), and the introductory paragraph of 93.5(A) and (B), Code of Criminal Procedure Art. 814(A)(12), and Code of Evidence Art. 412.1, and to enact R.S. 14:41(D), and 42(A)(7) and Code of Criminal Procedure Art. 814(A)(69) and (70), relative to sex offenses; to provide relative to crimes of violence; to provide relative to the elements of certain sex offenses; to provide relative to certain evidence in sexual assault cases; to provide relative to responsive verdicts for certain sex offenses; to provide definitions; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 14:2(B)(8), (29) and (40), 41(B), 42(A)(6) and (C), 43.2(A)(1) and (2), 43.3(A)(1), 44.1(A)(3), 44.2(B)(2), and the introductory paragraph of 93.5(A) and (B) are hereby amended and reenacted and R.S. 14:41(D) and 42(A)(7) are hereby enacted to read as follows:

§2. Definitions

\* \* \*

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

\* \* \*

1 (8) Repealed by Acts 2017, No. 281, §3, eff. August 1, 2017 Aggravated  
2 kidnapping of a child.

3 \* \* \*

4 (29) Repealed by Acts 2017, No. 281, §3, eff. August 1, 2017 Molestation  
5 of a juvenile or a person with a physical or mental disability.

6 \* \* \*

7 (40) Repealed by Acts 2014, No. 602, §7, eff. June 12, 2014 Sexual battery  
8 of persons with infirmities.

9 \* \* \*

10 §41. Rape; defined

11 \* \* \*

12 B. Emission is not necessary, and any sexual penetration, when the rape  
13 involves vaginal or anal intercourse, whether the penetration is accomplished  
14 using the genitals of the offender or victim or using any instrumentality and  
15 however slight, is sufficient to complete the crime.

16 \* \* \*

17 D. For purposes of this Subpart, "anal sexual intercourse" and "vaginal  
18 sexual intercourse" mean the intentional engaging in any of the following acts  
19 with another person:

20 (1) The penetration of the victim's anus or vagina by the offender using  
21 the genitals of the offender.

22 (2) The penetration of the offender's anus or vagina by the victim using  
23 the genitals of the victim.

24 (3) The penetration of the victim's anus or vagina by the offender using  
25 any instrumentality, except that normal medical treatment or normal sanitary  
26 care shall not be construed as sexual intercourse under the provisions of this  
27 Section.

28 (4) The penetration of the offender's anus or vagina by the victim using  
29 any instrumentality except that normal medical treatment or normal sanitary  
30 care shall not be construed as sexual intercourse under the provisions of this

1           **Section.**

2   \*       \*       \*

3           §42. First degree rape

4                       A. First degree rape is a rape committed upon a person sixty-five years of age  
5                       or older or where the anal, oral, or vaginal sexual intercourse is deemed to be without  
6                       lawful consent of the victim because it is committed under any one or more of the  
7                       following circumstances:

8   \*       \*       \*

9                       (6) When the victim is prevented from resisting the act because the victim  
10                       suffers from a physical or mental infirmity preventing such resistance **is a person**  
11                       **with a disability.**

12                       **(7) When the offender commits the act when engaged in the perpetration**  
13                       **or attempted perpetration of any violation of Subsubpart 3 of Subpart A of Part**  
14                       **III of Chapter 1 of this Title, relative to burglary offenses.**

15   \*       \*       \*

16                       C. For purposes of this Section, **"person with a disability" means a person**  
17                       **with a mental, physical, or developmental disability that substantially impairs**  
18                       **the person's ability to provide adequately for his or her own care or protection.**

19                       the following words have the following meanings:

20                       (1) ~~"Physical infirmity" means a person who is a quadriplegic or paraplegic.~~

21                       (2) ~~"Mental infirmity" means a person with an intelligence quotient of~~  
22                       ~~seventy or lower.~~

23   \*       \*       \*

24           §43.2. Second degree sexual battery

25                       A. Second degree sexual battery is the intentional engaging in any of the  
26                       following acts with another person when the offender intentionally inflicts serious  
27                       bodily injury on the victim:

28                       (1) The touching of the anus or genitals of the victim by the offender using  
29                       any instrumentality or any part of the body of the offender, **directly or through**  
30                       **clothing;** or

1 (2) The touching of the anus or genitals of the offender by the victim using  
2 any instrumentality or any part of the body of the victim, **directly or through**  
3 **clothing.**

4 \* \* \*

5 §43.3. Oral sexual battery

6 A. Oral sexual battery is the intentional touching of the anus or genitals of the  
7 victim by the offender using the mouth or tongue of the offender, or the touching of  
8 the anus or genitals of the offender by the victim using the mouth or tongue of the  
9 victim, when any of the following occur:

10 (1) The victim, ~~who is not the spouse of the offender,~~ is under the age of  
11 fifteen years and is at least three years younger than the offender.

12 \* \* \*

13 §44.1. Second degree kidnapping

14 A. Second degree kidnapping is the doing of any of the acts listed in  
15 Subsection B of this Section wherein the victim is any of the following:

16 \* \* \*

17 (3) Physically injured or sexually abused. **For the purposes of this**  
18 **Paragraph, "sexually abused" means that the victim was subjected to any sex**  
19 **offense as defined in R.S. 15:541.**

20 \* \* \*

21 §44.2. Aggravated kidnapping of a child

22 \* \* \*

23 B. \* \* \*

24 (2) Notwithstanding the provisions of Paragraph (1) of this Subsection, if the  
25 child is returned not physically injured or sexually abused, then the offender shall be  
26 punished in accordance with the provisions of R.S. 14:44.1. **For the purposes of this**  
27 **Paragraph, "sexually abused" means that the child was subjected to any sex**  
28 **offense as defined in R.S. 15:541.**

29 \* \* \*

30 §93.5. Sexual battery of persons with infirmities

1 A. Sexual battery of persons with infirmities is the intentional engaging in  
2 any of the sexual acts listed in Subsection B of this Section with another person,~~who~~  
3 ~~is not the spouse of the offender~~, when:

4 \* \* \*

5 B. For purposes of this Section, "sexual acts" mean either of the following:

6 (1) The touching of the anus or genitals of the victim by the offender using  
7 any instrumentality or any part of the body of the offender, **directly or through**  
8 **clothing**.

9 (2) The touching of the anus or genitals of the offender by the victim using  
10 any instrumentality or any part of the body of the victim, **directly or through**  
11 **clothing**.

12 \* \* \*

13 Section 2. Code of Criminal Procedure Art. 814(A)(12) is hereby amended and  
14 reenacted and (69) and (70) are hereby enacted to read as follows:

15 Art. 814. Responsive verdicts; in particular

16 A. The only responsive verdicts which may be rendered when the indictment  
17 charges the following offenses are:

18 \* \* \*

19 12. First degree rape (formerly titled aggravated rape) of a child under the age  
20 of thirteen:

21 Guilty.

22 Guilty of attempted first degree rape.

23 Guilty of second degree rape.

24 Guilty of attempted second degree rape.

25 Guilty of third degree rape.

26 Guilty of attempted third degree rape.

27 **Guilty of sexual battery of a child under the age of thirteen.**

28 **Guilty of attempted sexual battery of a child under the age of thirteen.**

29 Guilty of sexual battery.

30 **Guilty of attempted sexual battery.**

1                    Guilty of molestation of a juvenile or a person with a physical or mental  
2                    disability with a victim under the age of thirteen.

3                    Guilty of attempted molestation of a juvenile or a person with a physical  
4                    or mental disability with a victim under the age of thirteen.

5                    Guilty of molestation of a juvenile or a person with a physical or mental  
6                    disability.

7                    Guilty of attempted molestation of a juvenile or a person with a physical or  
8                    mental disability.

9                    Guilty of indecent behavior with a juvenile with a victim under the age  
10                   of thirteen.

11                   Guilty of attempted indecent behavior with a juvenile with a victim  
12                   under the age of thirteen.

13                   Guilty of indecent behavior with a juvenile.

14                   Guilty of attempted indecent behavior with a juvenile.

15                   Not guilty.

16                   \*           \*           \*

17                   69. Second Degree Kidnapping When Victim is Sexually Abused:

18                   Guilty.

19                   Guilty of attempted second degree kidnapping.

20                   Guilty of any predicate sex offense or offenses alleged in the indictment  
21                   or bill of information.

22                   Not guilty.

23                   70. Aggravated Kidnapping of a Child When Victim is Sexually Abused:

24                   Guilty.

25                   Guilty of attempted aggravated kidnapping of a child.

26                   Guilty of any predicate sex offense or offenses alleged in the indictment.

27                   Not guilty.

28                   \*           \*           \*

29                   Section 3. Code of Evidence Art. 412.1 is hereby amended and reenacted to read as  
30                   follows:

1 Art. 412.1. Victim's attire in sexual assault cases

2 A. When an accused is charged with a crime involving sexually assaultive  
3 behavior, or with acts that constitute a sex offense involving a victim who was  
4 under the age of seventeen at the time of the offense, ~~the crime of aggravated or~~  
5 ~~first degree rape, forcible or second degree rape, simple or third degree rape, sexual~~  
6 ~~battery, or second degree sexual battery,~~ the manner and style of the victim's attire  
7 shall not be admissible as evidence that the victim encouraged or consented to the  
8 offense; however, items of clothing or parts thereof may be introduced in order to  
9 establish the presence or absence of the elements of the offense and the proof of its  
10 occurrence.

11 B. The rules of admissibility of evidence provided by this Article shall also  
12 apply to civil actions brought by the victim which are alleged to arise from ~~the~~  
13 ~~crimes of aggravated or first degree rape, forcible or second degree rape, simple or~~  
14 ~~third degree rape, sexual battery, or second degree sexual battery~~ any crime  
15 referenced in Paragraph A of this Article committed by the defendant, whether  
16 or not convicted of such crimes.

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_