

2016 Regular Session

SENATE BILL NO. 162

BY SENATOR PETERSON

DOMESTIC VIOLENCE. Provides relative to criminal and civil actions against spouses.
(8/1/16)

1 AN ACT

2 To enact Code of Evidence Articles 412.4 and 412.5 and to amend and reenact R.S. 9:291,
3 relative to criminal and civil actions against spouses and other family members; to
4 provide relative to evidence of similar crimes, wrongs, or acts in domestic abuse
5 cases and in certain civil cases; to provide relative to interspousal immunity; and to
6 provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Code of Evidence Articles 412.4 and 412.5 are hereby enacted to read as
9 follows:

10 **Art. 412.4. Evidence of similar crimes, wrongs, or acts in domestic abuse cases**

11 **A. When an accused is charged with a crime involving abusive behavior**
12 **against a family member, household member, or dating partner, or with acts**
13 **that constitute cruelty involving a victim who was under the age of seventeen at**
14 **the time of the offense, evidence of the accused's commission of another crime,**
15 **wrong, or act involving assaultive behavior against a family member, household**
16 **member, or dating partner, or acts that constitute cruelty involving a victim**
17 **who was under the age of seventeen at the time of the offense, may be admissible**

1 and may be considered for its bearing on any matter to which it is relevant,
2 subject to the balancing test provided in Article 403.

3 B. In a case in which the state intends to offer evidence under the
4 provisions of this Article, the prosecution shall, upon request of the accused,
5 provide reasonable notice in advance of trial of the nature of any such evidence
6 it intends to introduce at trial for such purposes.

7 C. This Article shall not be construed to limit the admission or
8 consideration of evidence under any other rule.

9 D. For purposes of this Article:

10 (1) "Abusive behavior" means any behavior of the offender involving the
11 use or threatened use of force against the person or property of a family
12 member, household member, or dating partner of the alleged offender.

13 (2) "Family member" means spouse, former spouse, parent, child,
14 stepparent, stepchild, foster parent, and foster child.

15 (3) "Household member" means any person of the opposite sex presently
16 or formerly living in the same residence with the offender as a spouse, whether
17 married or not, or any child presently or formerly living in the same residence
18 with the offender, or any child of the offender regardless of where the child
19 resides.

20 (4) "Dating partner" means any person who is or has been in a social
21 relationship of a romantic or intimate nature with the offender. The existence
22 of such a relationship shall be determined based on a consideration of the
23 following factors:

24 (a) The length of the relationship.

25 (b) The type of relationship.

26 (c) The frequency of interaction between the persons involved in the
27 relationship.

28 Art. 412.5. Evidence of similar crimes, wrongs, or acts in certain civil cases

29 A. In any civil action alleging acts of domestic abuse as defined in R.S.

1 46:2132, domestic abuse battery, domestic abuse aggravated assault, sexually
2 assaultive behavior, or acts that constitute a sex offense involving a victim who
3 was under the age of seventeen at the time of the offense, evidence of the
4 defendant's commission of a crime, wrong, or act involving acts of domestic
5 abuse as defined in R.S. 46:2132, domestic abuse battery, domestic abuse
6 aggravated assault, sexually assaultive behavior or acts that indicate a lustful
7 disposition toward children, may be admissible and may be considered for its
8 bearing on any matter to which it is relevant subject to the balancing test
9 provided in Article 403.

10 B. In a case in which a plaintiff intends to offer evidence under the
11 provisions of this Article, the plaintiff shall, upon request of the defendant,
12 provide reasonable notice in advance of trial of the nature of any such evidence
13 it intends to introduce at trial for such purposes.

14 C. This Article shall not be construed to limit the admission or
15 consideration of evidence under any other rule.

16 Section 2. R.S. 9:291 is hereby amended and reenacted to read as follows:

17 §291. Suits between spouses

18 A. Spouses may not sue each other except for causes of action pertaining to
19 contracts or arising out of the provisions of Book III, Title VI of the Civil Code; for
20 restitution of separate property; for divorce or declaration of nullity of the marriage;
21 and for causes of action pertaining to spousal support or the support or custody of a
22 child while the spouses are living separate and apart.

23 B. The interspousal immunity created by this Section shall not be
24 construed to abrogate or modify any cause of action that one spouse might have
25 against the other. The effect of this Section is to bar the right of action that one
26 spouse has against the other, and prescription is suspended as between spouses
27 during the marriage.

28 C. A judgment of divorce places former spouses in the same situation
29 with respect to each other and any causes of action one spouse might have

1 **against the other as if no marriage had ever been contracted between them.**

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

DIGEST

SB 162 Original 2016 Regular Session Peterson

Proposed law provides that when an accused is charged with a crime involving abusive behavior against a family member, household member, or dating partner, or with acts that constitute cruelty involving a victim who was under the age of 17 at the time of the offense, evidence of the accused's commission of another crime, wrong, or act involving assaultive behavior against a family member, household member or dating partner, or acts that constitute cruelty involving a victim who was under the age of 17 at the time of the offense, may be admissible and may be considered for its bearing on any matter to which it is relevant, subject to the balancing test provided in present law.

Proposed law provides that in a case in which the state intends to offer evidence under the provisions of proposed law, the prosecution, upon request of the accused, must provide reasonable notice in advance of trial of the nature of any such evidence it intends to introduce at trial for such purposes.

Proposed law cannot be construed to limit the admission or consideration of evidence under any other provision of present law.

Proposed law provides the following definitions:

- (1) "Abusive behavior" means any behavior of the offender involving the use or threatened use of force against the person or property of a family member, household member, or dating partner of the alleged offender.
- (2) "Family member" means spouses, former spouse, parent, child, stepparent, stepchild, foster parent, and foster child.
- (3) "Household member" means any person of the opposite sex presently or formerly living in the same residence with the offender as a spouse, whether married or not, or any child presently or formerly living in the same residence with the offender, or any child of the offender regardless of where the child resides.
- (4) "Dating partner" means any person who is or has been in a social relationship of a romantic or intimate nature with the offender, and the existence of such a relationship is to be determined based on a consideration of the following factors:
 - (a) The length of the relationship.
 - (b) The type of relationship.
 - (c) The frequency of interaction between the persons involved in the relationship.

Proposed law provides that in any civil action alleging acts of domestic abuse, domestic abuse battery, domestic abuse aggravated assault, sexually assaultive behavior, or acts that constitute a sex offense involving a victim who was under the age of 17 at the time of the offense, evidence of the defendant's commission of a crime, wrong, or act involving domestic abuse, domestic abuse battery, domestic abuse aggravated assault, sexually assaultive behavior or acts that indicate a lustful disposition toward children may be admissible and may be considered for its bearing on any matter to which it is relevant subject

to the balancing test provided in present law.

Proposed law provides that in a case in which a plaintiff intends to offer evidence under the provisions of proposed law, the plaintiff, upon request of the defendant, must provide reasonable notice in advance of trial of the nature of any such evidence it intends to introduce at trial for such purposes.

Proposed law cannot be construed to limit the admission or consideration of evidence under any other provision of present law.

Present law provides that spouses cannot sue each other except for causes of action pertaining to contracts or arising out of certain provisions of present law relative to restitution of separate property, divorce or declaration of nullity of the marriage, and causes of action pertaining to spousal support or the support or custody of a child while the spouses are living separate and apart.

Proposed law retains present law and adds that the interspousal immunity created by present law cannot be construed to abrogate or modify any cause of action that one spouse might have against the other. Proposed law further provides that the effect of present law is to bar the right of action that one spouse has against the other, and prescription is suspended as between spouses during the marriage. Proposed law further provides that a judgment of divorce places former spouses in the same situation with respect to each other and any causes of action one spouse might have against the other as if no marriage had ever been contracted between them.

Effective August 1, 2016.

(Amends R.S. 9:291; adds C.E. Art. 412.4 and 412.5)