

1 Be it enacted by the Legislature of Louisiana:

2 Section 1. R.S. 14:95.10(A), (C), and (E) are hereby amended and reenacted and
3 R.S. 14:2(B)(47), 34.9, and 34.9.1 are hereby enacted to read as follows:

4 §2. Definitions

5 * * *

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

13 * * *

14 (47) Aggravated assault upon a dating partner.

15 * * *

16 §34.9. Battery of a dating partner

17 A. Battery of a dating partner is the intentional use of force or violence
18 committed by one dating partner upon the person of another dating partner.

19 B. For purposes of this Section:

20 (1) "Burning" means an injury to flesh or skin caused by heat, electricity,
21 friction, radiation, or any other chemical or thermal reaction.

22 (2) "Court-monitored domestic abuse intervention program" means a
23 program, comprised of a minimum of twenty-six in-person sessions occurring over
24 a minimum of twenty-six weeks, that follows a model designed specifically for
25 perpetrators of domestic abuse. The offender's progress in the program shall be
26 monitored by the court. The provider of the program shall have all of the following:

27 (a) Experience in working directly with perpetrators and victims of domestic
28 abuse.

29 (b) Experience in facilitating batterer intervention groups.

1 (c) Training in the causes and dynamics of domestic violence, characteristics
2 of batterers, victim safety, and sensitivity to victims.

3 (d) "Dating partner" means any person who is involved or has been involved
4 in a sexual or intimate relationship with the offender characterized by the expectation
5 of affectionate involvement independent of financial considerations, regardless of
6 whether the person presently lives or formerly lived in the same residence with the
7 offender. "Dating partner" shall not include a casual relationship or ordinary
8 association between persons in a business or social context.

9 (4) "Serious bodily injury" means bodily injury that involves
10 unconsciousness, extreme physical pain, or protracted and obvious disfigurement,
11 or protracted loss or impairment of the function of a bodily member, organ, or
12 mental faculty, or a substantial risk of death.

13 (5) "Strangulation" means intentionally impeding the normal breathing or
14 circulation of the blood by applying pressure on the throat or neck or by blocking the
15 nose or mouth of the victim.

16 C. On a first conviction, notwithstanding any other provision of law to the
17 contrary, the offender shall be fined not less than three hundred dollars nor more than
18 one thousand dollars and shall be imprisoned for not less than thirty days nor more
19 than six months. At least forty-eight hours of the sentence imposed shall be served
20 without benefit of parole, probation, or suspension of sentence. Imposition or
21 execution of the remainder of the sentence shall not be suspended unless either of the
22 following occurs:

23 (1) The offender is placed on probation with a minimum condition that he
24 serve four days in jail and complete a court-monitored domestic abuse intervention
25 program, and the offender shall not possess a firearm throughout the entirety of the
26 sentence.

27 (2) The offender is placed on probation with a minimum condition that he
28 perform eight, eight-hour days of court-approved community service activities and

1 complete a court-monitored domestic abuse intervention program, and the offender
2 shall not possess a firearm throughout the entirety of the sentence.

3 D. On a conviction of a second offense, notwithstanding any other provision
4 of law to the contrary, regardless of whether the second offense occurred before or
5 after the first conviction, the offender shall be fined not less than seven hundred fifty
6 dollars nor more than one thousand dollars and shall be imprisoned with or without
7 hard labor for not less than sixty days nor more than one year. At least fourteen days
8 of the sentence imposed shall be served without benefit of parole, probation, or
9 suspension of sentence, and the offender shall be required to complete a court-
10 monitored domestic abuse intervention program. Imposition or execution of the
11 remainder of the sentence shall not be suspended unless either of the following
12 occurs:

13 (1) The offender is placed on probation with a minimum condition that he
14 serve thirty days in jail and complete a court-monitored domestic abuse intervention
15 program, and the offender shall not possess a firearm throughout the entirety of the
16 sentence.

17 (2) The offender is placed on probation with a minimum condition that he
18 perform thirty eight-hour days of court-approved community service activities and
19 complete a court-monitored domestic abuse intervention program, and the offender
20 shall not possess a firearm throughout the entirety of the sentence.

21 E. On a conviction of a third offense, notwithstanding any other provision
22 of law to the contrary and regardless of whether the offense occurred before or after
23 an earlier conviction, the offender shall be imprisoned with or without hard labor for
24 not less than one year nor more than five years and shall be fined two thousand
25 dollars. The first year of the sentence of imprisonment shall be imposed without
26 benefit of probation, parole, or suspension of sentence.

27 F.(1) Except as otherwise provided in Paragraph (2) of this Subsection, on
28 a conviction of a fourth or subsequent offense, notwithstanding any other provision
29 of law to the contrary and regardless of whether the fourth offense occurred before

1 or after an earlier conviction, the offender shall be imprisoned with hard labor for not
2 less than ten years nor more than thirty years and shall be fined five thousand dollars.
3 The first three years of the sentence of imprisonment shall be imposed without
4 benefit of probation, parole, or suspension of sentence.

5 (2) If the offender has previously received the benefit of suspension of
6 sentence, probation, or parole as a fourth or subsequent offender, no part of the
7 sentence may be imposed with benefit of suspension of sentence, probation, or
8 parole, and no portion of the sentence shall be imposed concurrently with the
9 remaining balance of any sentence to be served for a prior conviction for any
10 offense.

11 G.(1) For purposes of determining whether an offender has a prior
12 conviction for violation of this Section, a conviction under this Section, or a
13 conviction under the laws of any state or an ordinance of a municipality, town, or
14 similar political subdivision of another state which prohibits the intentional use of
15 force or violence committed by one household member, family member, or dating
16 partner upon another household member, family member, or dating partner shall
17 constitute a prior conviction.

18 (2) For purposes of this Section, a prior conviction shall not include a
19 conviction for an offense under this Section if the date of completion of sentence,
20 probation, parole, or suspension of sentence is more than ten years prior to the
21 commission of the crime with which the offender is charged, and such conviction
22 shall not be considered in the assessment of penalties hereunder. However, periods
23 of time during which the offender was incarcerated in a penal institution in this or
24 any other state shall be excluded in computing the ten-year period.

25 H. An offender ordered to complete a court-monitored domestic abuse
26 intervention program required by the provisions of this Section shall pay the cost
27 incurred in participation in the program. Failure to make such payment shall subject
28 the offender to revocation of probation, unless the court determines that the offender
29 is unable to pay.

1 I. This Subsection shall be cited as the "Dating Partner Abuse Child
2 Endangerment Law". When the state proves, in addition to the elements of the crime
3 as set forth in Subsection A of this Section, that a minor child thirteen years of age
4 or younger was present at the residence or any other scene at the time of the
5 commission of the offense, of the sentence imposed by the court, the execution of the
6 minimum mandatory sentence provided by Subsection C or D of this Section, as
7 appropriate, shall not be suspended, the minimum mandatory sentence imposed
8 under Subsection E of this Section shall be two years without suspension of sentence,
9 and the minimum mandatory sentence imposed under Subsection F of this Section
10 shall be four years without suspension of sentence.

11 J. If the victim of the offense is pregnant and the offender knows that the
12 victim is pregnant at the time of the commission of the offense, the offender, who is
13 sentenced under the provisions of this Section, shall be required to serve a minimum
14 of forty-five days without benefit of suspension of sentence for a first conviction,
15 upon a second conviction shall serve a minimum of one year imprisonment without
16 benefit of suspension of sentence, upon a third conviction shall serve a minimum of
17 two years with or without hard labor without benefit of probation, parole, or
18 suspension of sentence, and upon a fourth and subsequent offense shall serve a
19 minimum of four years at hard labor without benefit of probation, parole, or
20 suspension of sentence.

21 K. Notwithstanding any other provision of law to the contrary, if the offense
22 involves strangulation, the offender shall be imprisoned at hard labor for not more
23 than three years.

24 L. Notwithstanding any other provision of law to the contrary, if the offense
25 is committed by burning that results in serious bodily injury, the offense shall be
26 classified as a crime of violence, and the offender shall be imprisoned at hard labor
27 for not less than five nor more than fifty years without benefit of probation, parole,
28 or suspension of sentence.

1 Section 2. R.S. 15:590(8) is hereby amended and reenacted to read as follows:

2 §590. Obtaining and filing fingerprint and identification data

3 The bureau shall obtain and file the name, fingerprints, description,
4 photographs, and any other pertinent identifying data as the deputy secretary deems
5 necessary, of any person who meets any of the following:

6 * * *

7 (8) Has been arrested, or has been issued a summons and subsequently
8 convicted, for a violation of any state law or local ordinance that prohibits the use
9 of force or a deadly weapon against any family member or household member as
10 those terms are defined by R.S. 14:35.3 ~~or any household member as defined by R.S.~~
11 ~~14:35.3~~ or that prohibits the use of force or violence against a dating partner as
12 defined by R.S. 14:34.9.

13 Section 3. R.S. 46:2136.3(A)(introductory paragraph) and (1) and 2151(B) are
14 hereby amended and reenacted to read as follows:

15 §2136.3. Prohibition on the possession of firearms by a person against whom a
16 protective order is issued

17 A. Any person against whom the court has issued a permanent injunction or
18 a protective order pursuant to a court-approved consent agreement or pursuant to the
19 provisions of R.S. 9:361 et seq., R.S. 9:372, R.S. 46:2136, 2151, or 2173, Children's
20 Code Article 1570, Code of Civil Procedure Article 3607.1, or Code of Criminal
21 Procedure Articles 30, ~~327.1, 335.1, 335.2~~ 320, or 871.1 shall be prohibited from
22 possessing a firearm for the duration of the injunction or protective order if both of
23 the following occur:

24 (1) The permanent injunction or protective order includes a finding that the
25 person subject to the permanent injunction or protective order represents a credible
26 threat to the physical safety of a family member, ~~or household member,~~ or dating
27 partner.

28 * * *

1 §2151. Dating violence

2 * * *

3 B. For purposes of this Section, "dating partner" means any person who is
4 involved or has been involved in a ~~social~~ sexual or intimate relationship ~~of a~~
5 ~~romantic or intimate nature~~ with the offender characterized by the expectation of
6 affectionate involvement independent of financial considerations, regardless of
7 whether the person presently lives or formerly lived in the same residence with the
8 offender. "Dating partner" shall not include a casual relationship or ordinary
9 association between persons in a business or social context. ~~victim and where the~~
10 ~~existence of such a relationship shall be determined based on a consideration of the~~
11 ~~following factors:~~

12 (1) ~~The length of the relationship.~~

13 (2) ~~The type of relationship.~~

14 (3) ~~The frequency of interaction between the persons involved in the~~
15 ~~relationship.~~

16 * * *

17 Section 4. Code of Evidence Article 412.4(A) and (D) are hereby amended and
18 reenacted to read as follows:

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

21 A. When an accused is charged with a crime involving abusive behavior
22 against a family member, household member, or dating partner or with acts which
23 constitute cruelty involving a victim who was under the age of seventeen at the time
24 of the offense, evidence of the accused's commission of another crime, wrong, or act
25 involving assaultive behavior against a family member, ~~or household member,~~ or
26 dating partner or acts which constitute cruelty involving a victim who was under the
27 age of seventeen at the time of the offense, may be admissible and may be

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

3 * * *

4 D. For purposes of this Article:

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

8 (2) "Dating partner" means any person who is involved or has been involved
9 in a sexual or intimate relationship with the offender characterized by the expectation
10 of affectionate involvement independent of financial considerations, regardless of
11 whether the person presently lives or formerly lived in the same residence with the
12 offender. "Dating partner" shall not include a casual relationship or ordinary
13 association between persons in a business or social context.

14 ~~(2)~~(3) "Family member" means spouses, former spouses, parents and
15 children, stepparents, stepchildren, foster parents, and foster children.

16 ~~(3)~~(4) "Household member" means any person having reached the age of
17 majority presently or formerly living in the same residence with the offender as a
18 spouse, whether married or not, or any child presently or formerly living in the same
19 residence with the offender, or any child of the offender regardless of where the child
20 resides.

21 Section 5. Code of Criminal Procedure Article 387(A)(introductory paragraph) is
22 hereby amended and reenacted to read as follows:

23 Art. 387. Additional information required when prosecuting certain offenses

24 A. When instituting the prosecution of an offense involving a violation of
25 any state law or local ordinance that prohibits the use of force or a deadly weapon
26 against any family member or household member as those terms are defined by R.S.
27 14:35.3 or any household member as defined by R.S. 14:35.3 ~~or that prohibits the use~~
28 of force or violence against a dating partner as defined by R.S. 14:34.9, the district

1 attorney, or city prosecutor for criminal prosecutions in city court, shall include the
2 following information in the indictment, information, or affidavit:

3 * * *

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)]

HB 223 Reengrossed

2017 Regular Session

Moreno

Abstract: Creates the crimes of battery of a dating partner and aggravated assault upon a dating partner, and expands applicability of other laws relative to domestic abuse to include abuse among dating partners.

Present law provides for the following:

- (1) The crime of domestic abuse battery for cases involving the use of force or violence by one household member or family member against another household member or family member. In addition to criminal penalties, prohibits persons convicted of domestic abuse battery from possessing a firearm for a period of 10 years from the date of completion of sentence, probation, parole, or suspension of sentence.
- (2) The crime of domestic abuse aggravated assault for cases involving an assault with a dangerous weapon by one household member or family member against another household member or family member. Because the offense is a felony and is designated as a crime of violence, persons convicted of the offense are prohibited from possessing a firearm for a period of ten years from the date of completion of sentence, probation, parole, or suspension of sentence.

Proposed law creates the crime of battery of a dating partner and provides for all of the following in this regard:

- (1) Criminal penalties including fines, terms of imprisonment, and enhanced penalties for offenses involving burning or strangulation.
- (2) Requires those persons placed on probation for the offense to complete a court-monitored domestic abuse intervention program and prohibits those persons from possessing a firearm for the entirety of the sentence.
- (3) Expands the present law (R.S. 14:95.10) prohibition on the possession of firearms by persons convicted of domestic abuse battery to include persons convicted of a second or subsequent offense of battery of a dating partner and persons convicted of battery of dating partner where the offense involves strangulation or burning.
- (4) Defines "dating partner" as any person who is involved or has been involved in a sexual or intimate relationship with the offender characterized by the expectation of affectionate involvement independent of financial considerations, regardless of whether the person presently lives or formerly lived in the same residence with the offender. Provides that "dating partner" shall not include a casual relationship or ordinary association between persons in a business or social context.

Proposed law creates the crime of aggravated assault upon a dating partner, as defined by proposed law, and provides criminal penalties for the offense. Further designates the crime as a crime of violence, and therefore, persons convicted of the offense are prohibited from possessing a firearm for a period of ten years from the date of completion of sentence, probation, parole, or suspension of sentence as provided by present law.

Present law provides for all of the following with regard to domestic abuse by one household member or family member against another household member or family member:

- (1) Requires the La. Bureau of Criminal Identification and Information to obtain and file the name, fingerprints, description, photographs, and other pertinent identifying data of any person who has been arrested, or has been issued a summons and subsequently convicted, for a violation of any state law or ordinance that prohibits the use of force or a deadly weapon against any family member or household member.
- (2) Prohibits any person against whom the court has issued a permanent injunction or a protective order relative to domestic abuse from possessing a firearm for the duration of the injunction or protective order if the injunction or order includes a finding that the person represents a credible threat to the physical safety of a family member or household member and the injunction or order informs the person that he is prohibited from possessing a firearm pursuant to both state and federal law.
- (3) For crimes in which the accused is charged with a crime involving abusive behavior against a family member or household member, provides for the admissibility of evidence of the accused's commission of another crime, wrong, or act involving assaultive behavior against a family member or household member unless the probative value of the evidence is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, or waste of time.
- (4) Requires the district attorney to include certain information in the indictment, information, or affidavit when instituting the prosecution for an offense involving a violation of any state law or local ordinance that prohibits the use of force or a deadly weapon against a family member or household member.
- (5) For all of these purposes, present law provides for the following definitions:
 - (a) "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.
 - (b) "Family member" means spouses, former spouses, parents, children, stepparents, stepchildren, foster parents, and foster children.
- (7) Defines "dating partner", for purposes of the present law Protection from Dating Violence Act (R.S. 46:2151 et seq.), as any person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

Proposed law expands the applicability of these provisions of present law to cases of abuse involving dating partners, and amends the definition of "dating partners" to have the same meaning as provided in the proposed law crime of battery of a dating partner.

(Amends R.S.14:95.10(A), (C), and (E), R.S. 15:590(8), R.S. 46:2136.3(A)(intro. para.) and (1) and 2151(B), C.E. Art. 412.4(A) and (D), and C.Cr.P. Art. 387(A)(intro. para.); Adds R.S. 14:2(B)(47), 34.9, and 34.9.1)

Summary of Amendments Adopted by House

The House Floor Amendments to the engrossed bill:

1. Remove proposed law provisions that expanded the application of the crimes of domestic abuse battery and domestic abuse aggravated assault to dating partners.
2. Create the crimes of battery of a dating partner and aggravated assault upon a dating partner and provide criminal penalties for these crimes.
3. Designate the crime of aggravated assault upon a dating partner as a crime of violence.
4. Expand the present law crime prohibiting possession of a firearm by persons convicted of domestic abuse battery to include persons convicted of a second or subsequent offense of battery of a dating partner and persons convicted of battery of a dating partner when the offense involves burning or strangulation.
5. Amend the definition of "dating partner" for purposes of present law and proposed law.
6. Amend the definition of "abusive behavior" for purposes of the present law provision regarding the admissibility of evidence of similar crimes, wrongs, or acts in domestic abuse cases.