

Regular Session, 2012

SENATE BILL NO. 121

BY SENATORS KOSTELKA, GUILLORY, MILLS AND PERRY

DOMESTIC VIOLENCE. Creates the crimes of domestic abuse aggravated assault. (gov sig)

1 AN ACT

2 To amend and reenact R.S. 14:35.3(G)(2) and to enact R.S. 14:37.7, relative to assault and

3 battery affecting domestic household members; to create the crime of domestic abuse

4 aggravated assault; to provide for enhancement of penalties when a minor under the

5 age of thirteen is present during the commission of the crime; to provide relative to

6 the cleansing period for prior domestic abuse battery convictions; to provide for

7 definitions; to provide for penalties; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 14:35.3(G)(2) is hereby amended and reenacted and R.S. 14:37.7 is

10 hereby enacted to read as follows:

11 §35.3. Domestic abuse battery

12 \* \* \*

13 G.(1) \* \* \*

14 (2) For purposes of this Section, a prior conviction shall not include a

15 conviction for an offense under this Section if **the date of completion of sentence,**

16 **probation, parole, or suspension of sentence is** ~~committed~~ more than ten years

17 prior to the commission of the crime for **with** which the defendant is ~~being tried~~

1 **charged**, and such conviction shall not be considered in the assessment of penalties  
2 hereunder. However, periods of time during which the offender was incarcerated in  
3 a penal institution in this or any other state shall be excluded in computing the ten-  
4 year period.

5 \* \* \*

6 **§37.7. Domestic abuse aggravated assault**

7 **A. Domestic abuse aggravated assault is an assault with a dangerous**  
8 **weapon committed by one household member upon another household member.**

9 **B. For purposes of this Section, "household member" means any person**  
10 **of the opposite sex presently living in the same residence, or living in the same**  
11 **residence within five years of the occurrence of the domestic abuse aggravated**  
12 **assault, with the defendant as a spouse, whether married or not, or any child**  
13 **presently living in the same residence or living in the same residence within five**  
14 **years immediately prior to the occurrence of the domestic abuse aggravated**  
15 **assault, or any child of the offender regardless of where the child resides.**

16 **C. Whoever commits the crime of domestic abuse aggravated assault**  
17 **shall be imprisoned at hard labor for not less than one year nor more than five**  
18 **years and fined not more than five thousand dollars.**

19 **D. This Subsection shall be cited as the "Domestic Abuse Aggravated**  
20 **Assault Child Endangerment Law". When the state proves, in addition to the**  
21 **elements of the crime as set forth in Subsection A of this Section, that a minor**  
22 **child thirteen years of age or younger was present at the residence or any other**  
23 **scene at the time of the commission of the offense, the mandatory minimum**  
24 **sentence imposed by the court shall be two years imprisonment at hard labor**  
25 **without benefit of parole, probation, or suspension of sentence.**

26 Section 2. This Act shall become effective upon signature by the governor or, if not  
27 signed by the governor, upon expiration of the time for bills to become law without signature  
28 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
29 vetoed by the governor and subsequently approved by the legislature, this Act shall become

1 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

Kostelka (SB 121)

Present law provides that for purposes of determining whether a defendant has a prior conviction for the present law crime of domestic abuse battery, a conviction under present law, or a conviction under the laws of any state or an ordinance of a municipality, town, or similar political subdivision of another state that prohibits the intentional use of force or violence committed by one household member upon another household member of the opposite sex presently or formerly living in the same residence with the defendant as a spouse, whether married or not, constitutes a prior conviction.

Present law further provides that under present law, a prior conviction does not include a conviction for an offense committed more than 10 years prior to the commission of the crime for which the defendant is being tried, excluding time during which the offender was incarcerated in a penal institution in this or any other state, and such conviction is not to be considered in the assessment of penalties. Present law further provides that periods of time during which the offender was incarcerated in a penal institution in La. or any other state are excluded in computing the 10-year period.

Proposed law provides that for purposes of determining whether a defendant has a prior conviction of domestic abuse battery, a prior conviction does not include a conviction if the date of completion of sentence, probation, parole, or suspension of sentence is more than 10 years prior to the commission of the crime with which the defendant is charged, and such conviction is not to be considered in the assessment of penalties.

Proposed law otherwise retains present law.

Proposed law creates the crime of domestic abuse aggravated assault, which is defined as an assault with a dangerous weapon committed by one household member upon another household member.

Present law defines "dangerous weapon" as any gas, liquid or other substance or instrumentality, which, in the manner used, is calculated or likely to produce death or great bodily harm.

Proposed law retains present law.

Proposed law defines "household member" as any person of the opposite sex presently living in the same residence, or living in the same residence within five years of the occurrence of the domestic abuse aggravated assault, with the defendant as a spouse, whether married or not, or any child presently living in the same residence or living in the same residence within five years immediately prior to the occurrence of the domestic abuse aggravated assault, or any child of the offender regardless of where the child resides.

Proposed law provides that whoever commits the crime of domestic abuse aggravated assault is to be imprisoned at hard labor for not less than one year nor more than five years and fined not more than \$5,000.

Proposed law provides that when the state proves, in addition to the elements of the crime of domestic abuse aggravated assault, that a minor child 13 years of age or younger was present at the residence or any other scene at the time of the commission of the offense, the mandatory minimum sentence imposed by the court is to be two years imprisonment at hard

labor without benefit of parole, probation, or suspension of sentence. This part of proposed law is to be cited as the "Domestic Abuse Aggravated Assault Child Endangerment Law".

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 14:35.3(G)(2); adds R.S. 14:37.7)

Summary of Amendments Adopted by Senate

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

1. Restores present law that periods of time during which the offender was incarcerated in a penal institution are excluded in computing the 10-year cleansing period.
2. Deletes proposed law relative to crime of domestic abuse assault.
3. Deletes provision of proposed law that sets forth the circumstances under which a crime of violence, as defined by present law, is to be designated an act of domestic violence.