ACT No. 173

SENATE BILL NO. 64

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

AN ACT

2	To amend and reenact R.S. 14:2(B)(8), (29) and (40), 41(B), 42(A)(6) and (C), 43.2(A)(1)
3	and (2), 43.3(A)(1), 44.1(A)(3), 44.2(B)(2), and the introductory paragraph of
4	93.5(A) and (B), Code of Criminal Procedure Art. 814(A)(12), and Code of Evidence
5	Art. 412.1, and to enact R.S. 14:41(D), and 42(A)(7) and Code of Criminal
6	Procedure Art. 814(A)(69) and (70), relative to sex offenses; to provide relative to
7	crimes of violence; to provide relative to the elements of certain sex offenses; to
8	provide relative to certain evidence in sexual assault cases; to provide relative to
9	responsive verdicts for certain sex offenses; to provide definitions; and to provide
10	for related matters.
11	Be it enacted by the Legislature of Louisiana:
12	Section 1. R.S. 14:2(B)(8), (29) and (40), 41(B), 42(A)(6) and (C), 43.2(A)(1) and
13	(2), 43.3(A)(1), 44.1(A)(3), 44.2(B)(2), and the introductory paragraph of 93.5(A) and (B)
14	are hereby amended and reenacted and R.S. 14:41(D) and 42(A)(7) are hereby enacted to
15	read as follows:
16	§2. Definitions
17	* * *
18	B. In this Code, "crime of violence" means an offense that has, as an element,
19	the use, attempted use, or threatened use of physical force against the person or
20	property of another, and that, by its very nature, involves a substantial risk that
21	physical force against the person or property of another may be used in the course
22	of committing the offense or an offense that involves the possession or use of a
23	dangerous weapon. The following enumerated offenses and attempts to commit any
24	of them are included as "crimes of violence":

SB NO. 64	ENROLLEI

1	(8) Repealed by Acts 2017, No. 281, §3, eff.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4	(29) Repealed by Acts 2017, No. 281, §3, eff.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7	(40) Repealed by Acts 2014, No. 602, §7, eff.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

SB NO. 64 ENROLLED

l	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	<u>clothing;</u> 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	<u>clothing</u> .
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	<u>clothing</u> .
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.

SB NO. 64 ENROLLED

l	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:

SB NO. 64 ENROLLED

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

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

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

PRESIDENT OF THE SENATE
SPEAKER OF THE HOUSE OF REPRESENTATIVES
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: