

ACT No. 84

2017 Regular Session

HOUSE BILL NO. 223

BY REPRESENTATIVE MORENO AND SENATOR CLAITOR

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AN ACT

To amend and reenact R.S. 14:95.10(A), (C), and (E), R.S. 15:590(8), R.S. 46:2136.3(A)(introductory paragraph) and (1) and 2151(B), Code of Evidence Article 412(A) and (D), and Code of Criminal Procedure Article 387(A)(introductory paragraph) and to enact R.S. 14:2(B)(47), 34.9, and 34.9.1, relative to domestic abuse; to provide relative to acts of abuse involving dating partners; to provide relative to the definition of "dating partner"; to create the crimes of battery of a dating partner and aggravated assault upon a dating partner; to prohibit the possession of a firearm by persons convicted of certain offenses of battery of a dating partner; to add offenses of abuse involving dating partners to the types of offenses for which certain information is obtained upon arrest and conviction; to provide relative to the possession of firearms by persons subject to a permanent injunction or protective order for acts of abuse involving dating partners; to provide relative to admissibility of evidence of similar crimes, wrongs, or acts in cases of abuse involving dating partners; to provide relative to the information required when instituting the prosecution for an offense involving abuse against a dating partner; to provide definitions; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

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

1 person or property of another, and that, by its very nature, involves a substantial risk
2 that physical force against the person or property of another may be used in the
3 course of committing the offense or an offense that involves the possession or use
4 of a dangerous weapon. The following enumerated offenses and attempts to commit
5 any of them are included as "crimes of violence":

6 * * *

7 (47) Aggravated assault upon a dating partner.

8 * * *

9 §34.9. Battery of a dating partner

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

12 B. For purposes of this Section:

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

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

20 (a) Experience in working directly with perpetrators and victims of domestic
21 abuse.

22 (b) Experience in facilitating batterer intervention groups.

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

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

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

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

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

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

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

23 D. On a conviction of a second offense, notwithstanding any other provision
24 of law to the contrary and regardless of whether the second offense occurred before
25 or after the first conviction, the offender shall be fined not less than seven hundred
26 fifty dollars nor more than one thousand dollars and shall be imprisoned with or
27 without hard labor for not less than sixty days nor more than one year. At least
28 fourteen days of the sentence imposed shall be served without benefit of parole,
29 probation, or suspension of sentence, and the offender shall be required to complete
30 a court-monitored domestic abuse intervention program. Imposition or execution of

1 the remainder of the sentence shall not be suspended unless either of the following
2 occurs:

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

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

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

17 F.(1) Except as otherwise provided in Paragraph (2) of this Subsection, on
18 a conviction of a fourth or subsequent offense, notwithstanding any other provision
19 of law to the contrary and regardless of whether the fourth offense occurred before
20 or after an earlier conviction, the offender shall be imprisoned with hard labor for not
21 less than ten years nor more than thirty years and shall be fined five thousand dollars.
22 The first three years of the sentence of imprisonment shall be imposed without
23 benefit of probation, parole, or suspension of sentence.

24 (2) If the offender has previously received the benefit of suspension of
25 sentence, probation, or parole as a fourth or subsequent offender, no part of the
26 sentence may be imposed with benefit of suspension of sentence, probation, or
27 parole, and no portion of the sentence shall be imposed concurrently with the
28 remaining balance of any sentence to be served for a prior conviction for any
29 offense.

1 G.(1) For purposes of determining whether an offender has a prior
2 conviction for violation of this Section, a conviction under this Section, or a
3 conviction under the laws of any state or an ordinance of a municipality, town, or
4 similar political subdivision of another state which prohibits the intentional use of
5 force or violence committed by one household member, family member, or dating
6 partner upon another household member, family member, or dating partner shall
7 constitute a prior conviction.

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

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

20 I. This Subsection shall be cited as the "Dating Partner Abuse Child
21 Endangerment Law". When the state proves, in addition to the elements of the crime
22 as set forth in Subsection A of this Section, that a minor child thirteen years of age
23 or younger was present at the residence or any other scene at the time of the
24 commission of the offense, of the sentence imposed by the court, the execution of the
25 minimum mandatory sentence provided by Subsection C or D of this Section, as
26 appropriate, shall not be suspended, the minimum mandatory sentence imposed
27 under Subsection E of this Section shall be two years without suspension of sentence,
28 and the minimum mandatory sentence imposed under Subsection F of this Section
29 shall be four years without suspension of sentence.

1 J. If the victim of the offense is pregnant and the offender knows that the
2 victim is pregnant at the time of the commission of the offense, the offender, who is
3 sentenced under the provisions of this Section, shall be required to serve a minimum
4 of forty-five days without benefit of suspension of sentence for a first conviction,
5 upon a second conviction shall serve a minimum of one year imprisonment without
6 benefit of suspension of sentence, upon a third conviction shall serve a minimum of
7 two years with or without hard labor without benefit of probation, parole, or
8 suspension of sentence, and upon a fourth and subsequent offense shall serve a
9 minimum of four years at hard labor without benefit of probation, parole, or
10 suspension of sentence.

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

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

19 §34.9.1. Aggravated assault upon a dating partner

20 A. Aggravated assault upon a dating partner is an assault with a dangerous
21 weapon committed by one dating partner upon another dating partner.

22 B. For purposes of this Section, "dating partner" means any person who is
23 involved or has been involved in a sexual or intimate relationship with the offender
24 characterized by the expectation of affectionate involvement independent of financial
25 considerations, regardless of whether the person presently lives or formerly lived in
26 the same residence with the offender. "Dating partner" shall not include a casual
27 relationship or ordinary association between persons in a business or social context.

28 C. Whoever commits the crime of aggravated assault upon a dating partner
29 shall be imprisoned at hard labor for not less than one year nor more than five years
30 and fined not more than five thousand dollars.

1 Code Article 1570, Code of Civil Procedure Article 3607.1, or Code of Criminal
2 Procedure Articles 30, ~~327.1, 335.1, 335.2~~ 320, or 871.1 shall be prohibited from
3 possessing a firearm for the duration of the injunction or protective order if both of
4 the following occur:

5 (1) The permanent injunction or protective order includes a finding that the
6 person subject to the permanent injunction or protective order represents a credible
7 threat to the physical safety of a family member, ~~or household member,~~ or dating
8 partner.

9 * * *

10 §2151. Dating violence

11 * * *

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

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

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

23 (3) ~~The frequency of interaction between the persons involved in the~~
24 ~~relationship.~~

25 * * *

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

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

3 A. When an accused is charged with a crime involving abusive behavior
4 against a family member, household member, or dating partner or with acts which
5 constitute cruelty involving a victim who was under the age of seventeen at the time
6 of the offense, evidence of the accused's commission of another crime, wrong, or act
7 involving assaultive behavior against a family member, ~~or~~ household member, or
8 dating partner or acts which constitute cruelty involving a victim who was under the
9 age of seventeen at the time of the offense, may be admissible and may be
10 considered for its bearing on any matter to which it is relevant, subject to the
11 balancing test provided in Article 403.

12 * * *

13 D. For purposes of this Article:

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

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

23 ~~(2)~~(3) "Family member" means spouses, former spouses, parents and
24 children, stepparents, stepchildren, foster parents, and foster children.

25 ~~(3)~~(4) "Household member" means any person having reached the age of
26 majority presently or formerly living in the same residence with the offender as a
27 spouse, whether married or not, or any child presently or formerly living in the same
28 residence with the offender, or any child of the offender regardless of where the child
29 resides.

