

2015 Regular Session

SENATE BILL NO. 117

BY SENATORS GARY SMITH, MILLS AND MORRELL

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

SEX OFFENSES. Provides relative to certain sex offenses. (8/1/15)

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AN ACT

To amend and reenact the introductory paragraph of R.S. 14:42(A) and 42(D)(1), 42.1, 43, and 43.1(A), R.S. 15:541(2)(a), (b) and (c) and 24(a) and 542(A)(3)(a) and (b), and Children's Code Art. 884.1(A)(1) and (2), and to enact R.S. 14:43.1.1, relative to sex offenses; to rename the crimes of "aggravated rape", "forcible rape", and "simple rape" to "first degree rape", "second degree rape", and "third degree rape", respectively; to provide relative to the elements of the crime of sexual battery; to provide for transitional phrasing; to create the crime of misdemeanor sexual battery; to provide for penalties; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. The introductory paragraph of R.S. 14:42(A) and 42(D)(1), 42.1, 43, and 43.1(A) are hereby amended and reenacted, and R.S. 14:43.1.1 is hereby enacted to read as follows:

§42. ~~Aggravated~~ **First degree** rape

A. ~~Aggravated~~ **First degree** rape is a rape committed upon a person sixty-five years of age or older or where the anal, oral, or vaginal sexual intercourse is deemed to be without lawful consent of the victim because it is committed under any

1 one or more of the following circumstances:

2 * * *

3 D.(1) Whoever commits the crime of ~~aggravated~~ **first degree** rape shall be
4 punished by life imprisonment at hard labor without benefit of parole, probation, or
5 suspension of sentence.

6 * * *

7 §42.1. ~~Forceible~~ **Second degree** rape

8 A. ~~Forceible~~ **Second degree** rape is rape committed when the anal, oral, or
9 vaginal sexual intercourse is deemed to be without the lawful consent of the victim
10 because it is committed under any one or more of the following circumstances:

11 (1) When the victim is prevented from resisting the act by force or threats of
12 physical violence under circumstances where the victim reasonably believes that
13 such resistance would not prevent the rape.

14 (2) When the victim is incapable of resisting or of understanding the nature
15 of the act by reason of stupor or abnormal condition of the mind produced by a
16 narcotic or anesthetic agent or other controlled dangerous substance administered by
17 the offender and without the knowledge of the victim.

18 B. Whoever commits the crime of ~~forceible~~ **second degree** rape shall be
19 imprisoned at hard labor for not less than five nor more than forty years. At least
20 two years of the sentence imposed shall be without benefit of probation, parole, or
21 suspension of sentence.

22 §43. ~~Simple~~ **Third degree** rape

23 A. ~~Simple~~ **Third degree** rape is a rape committed when the anal, oral, or
24 vaginal sexual intercourse is deemed to be without the lawful consent of a victim
25 because it is committed under any one or more of the following circumstances:

26 (1) When the victim is incapable of resisting or of understanding the nature
27 of the act by reason of a stupor or abnormal condition of mind produced by an
28 intoxicating agent or any cause and the offender knew or should have known of the
29 victim's incapacity.

1 (2) When the victim, through unsoundness of mind, is temporarily or
2 permanently incapable of understanding the nature of the act and the offender knew
3 or should have known of the victim's incapacity.

4 (3) When the ~~female~~ victim submits under the belief that the person
5 committing the act is ~~her husband~~ **someone known to the victim, other than the**
6 **offender**, and such belief is intentionally induced by any artifice, pretense, or
7 concealment practiced by the offender.

8 **(4) When the offender acts without the consent of the victim.**

9 B. Whoever commits the crime of ~~simple~~ **third degree** rape shall be
10 imprisoned, ~~with or without~~ **at** hard labor, without benefit of parole, probation, or
11 suspension of sentence, for not more than twenty-five years.

12 §43.1. Sexual battery

13 A. Sexual battery is the intentional touching of the anus or genitals of the
14 victim by the offender using any instrumentality or any part of the body of the
15 offender, **directly or through clothing**, or the touching of the anus or genitals of the
16 offender by the victim using any instrumentality or any part of the body of the
17 victim, **directly or through clothing**, when any of the following occur:

18 (1) The offender acts without the consent of the victim.

19 (2) ~~The act is consensual but the other person, who is not the spouse of the~~
20 ~~offender,~~ **victim** has not yet attained fifteen years of age and is at least three years
21 younger than the offender.

22 (3) The offender is seventeen years of age or older and any of the following
23 exist:

24 (a) The act is without consent of the victim, and the victim is prevented from
25 resisting the act because either of the following conditions exist:

26 (i) The victim has paraplegia, quadriplegia, or is otherwise physically
27 incapable of preventing the act due to a physical disability.

28 (ii) The victim is incapable, through unsoundness of mind, of understanding
29 the nature of the act, and the offender knew or should have known of the victim's

1 incapacity.

2 (b) The act is without consent of the victim, and the victim is sixty-five years
3 of age or older.

4 * * *

5 §43.1.1. Misdemeanor sexual battery

6 A. Misdemeanor sexual battery is the intentional touching of the breasts
7 or buttocks of the victim by the offender using any instrumentality or any part
8 of the body of the offender, directly or through clothing, or the intentional
9 touching of the breasts or buttocks of the offender by the victim using any
10 instrumentality or any part of the body of the victim, directly or through
11 clothing, when the offender acts without the consent of the victim.

12 B. Whoever commits the crime of misdemeanor sexual battery shall be
13 fined not more than one thousand dollars, or imprisoned for not more than six
14 months, or both.

15 C. The offender shall not be eligible to have his conviction set aside and
16 his prosecution dismissed in accordance with Code of Criminal Procedure
17 Article 894.

18 D. The offender shall not be subject to any provisions of law that are
19 applicable to sex offenders, including but not limited to any provision that
20 requires the registration of the offender and notice to the public.

21 Section 2. R.S. 15:541(2)(a), (b) and (c) and 24(a) and 542(A)(3)(a) and (b) are
22 hereby amended and reenacted to read as follows:

23 §541. Definitions

24 For the purposes of this Chapter, the definitions of terms in this Section shall
25 apply:

26 * * *

27 (2) "Aggravated offense" means a conviction for the perpetration or
28 attempted perpetration of, or conspiracy to commit, any of the following:

29 (a)(i) Aggravated rape (R.S. 14:42), **which occurred prior to August 1, 2015, and**

1 which shall include convictions for the perpetration or attempted perpetration of, or
 2 conspiracy to commit, aggravated oral sexual battery (formerly R.S. 14:43.4, Repealed by
 3 Acts 2001, No. 301, §2) occurring prior to August 15, 2001.

4 **(ii) First degree rape (R.S. 14:42), which occurred on or after August 1,**
 5 **2015.**

6 (b)(i) Forcible rape (R.S. 14:42.1) **which occurred prior to August 1, 2015.**

7 **(ii) Second degree rape (R.S. 14:42.1) which occurred on or after August**
 8 **1, 2015.**

9 (c)(i) Simple rape under the provisions of R.S. 14:43(A)(1) and (2) **which**
 10 **occurred on or after August 1, 2015.**

11 **(ii) Third degree rape under the provisions of R.S. 14:43(A)(1) and (2)**
 12 **which occurred on or after August 1, 2015.**

13 * * *

14 (24)(a) "Sex offense" means deferred adjudication, adjudication withheld,
 15 or conviction for the perpetration or attempted perpetration of or conspiracy to
 16 commit human trafficking when prosecuted under the provisions of R.S.
 17 14:46.2(B)(2), R.S. 14:46.3 (trafficking of children for sexual purposes), R.S. 14:89
 18 (crime against nature), R.S. 14:89.1 (aggravated crime against nature), R.S.
 19 14:89.2(B)(3) (crime against nature by solicitation), R.S. 14:80 (felony carnal
 20 knowledge of a juvenile), R.S. 14:81 (indecent behavior with juveniles), R.S. 14:81.1
 21 (pornography involving juveniles), R.S. 14:81.2 (molestation of a juvenile or a
 22 person with a physical or mental disability), R.S. 14:81.3 (computer-aided
 23 solicitation of a minor), R.S. 14:81.4 (prohibited sexual conduct between an educator
 24 and student), R.S. 14:82.1 (prostitution; persons under eighteen), R.S. 14:82.2(C)(4)
 25 and (5) (purchase of commercial sexual activity), R.S. 14:92(A)(7) (contributing to
 26 the delinquency of juveniles), R.S. 14:93.5 (sexual battery of the infirm), R.S.
 27 14:106(A)(5) (obscenity by solicitation of a person under the age of seventeen), R.S.
 28 14:283 (video voyeurism), R.S. 14:41 (rape), R.S. 14:42 (aggravated rape **or first**
 29 **degree rape**), R.S. 14:42.1 (forcible rape **or second degree rape**), R.S. 14:43

1 (simple rape **or third degree rape**), R.S. 14:43.1 (sexual battery), R.S. 14:43.2
 2 (second degree sexual battery), R.S. 14:43.3 (oral sexual battery), R.S. 14:43.5
 3 (intentional exposure to AIDS virus), or a second or subsequent conviction of R.S.
 4 14:283.1 (voyeurism), committed on or after June 18, 1992, or committed prior to
 5 June 18, 1992, if the person, as a result of the offense, is under the custody of the
 6 Department of Public Safety and Corrections on or after June 18, 1992. A conviction
 7 for any offense provided in this definition includes a conviction for the offense under
 8 the laws of another state, or military, territorial, foreign, tribal, or federal law which
 9 is equivalent to an offense provided for in this Chapter, unless the tribal court or
 10 foreign conviction was not obtained with sufficient safeguards for fundamental
 11 fairness and due process for the accused as provided by the federal guidelines
 12 adopted pursuant to the Adam Walsh Child Protection and Safety Act of 2006.

13 * * *

14 §542. Registration of sex offenders and child predators

15 A. The following persons shall be required to register and provide
 16 notification as a sex offender or child predator in accordance with the provisions of
 17 this Chapter:

18 * * *

19 (3) Any juvenile, who has attained the age of fourteen years at the time of
 20 commission of the offense, who has been adjudicated delinquent based upon the
 21 perpetration, attempted perpetration, or conspiracy to commit any of the following
 22 offenses:

23 (a) Aggravated **or first degree** rape (R.S. 14:42), which shall include those
 24 that have been adjudicated delinquent based upon the perpetration, attempted
 25 perpetration, or conspiracy to commit aggravated oral sexual battery (formerly R.S.
 26 14:43.4, Repealed by Acts 2001, No. 301, §2) occurring prior to August 15, 2001.

27 (b) Forcible **or second degree** rape (R.S. 14:42.1).

28 * * *

29 Section 3. Children's Code Art. 884.1(A)(1) and (2) is hereby amended and

1 reenacted to read as follows:

2 Art. 884.1. Informing the child of sex offender registration and notification
3 requirements; form

4 A. When the child has admitted the allegations of the petition or when
5 adjudicated delinquent for any of the following offenses, the court shall provide him
6 with written notice of the requirements for registration as a sex offender:

7 (1) Aggravated **or first degree** rape as defined in R.S. 14:42.

8 (2) Forcible **or second degree** rape as defined in R.S. 14:42.1.

9 * * *

10 Section 4. The Louisiana State Law Institute is hereby authorized and directed to
11 change any and all references to the crimes of "aggravated rape", "forcible rape", and
12 "simple rape" in current law, not already amended by Sections 1, 2 and 3 of this Act, in the
13 manner it deems appropriate in order to make those provisions consistent with the provisions
14 of Sections 1, 2 and 3 of this Act.

The original instrument was prepared by Alden A. Clement, Jr. The following digest, which does not constitute a part of the legislative instrument, was prepared by Mary Dozier O'Brien.

DIGEST

SB 117 Reengrossed

2015 Regular Session

Gary Smith

Present law provides relative to the crimes of aggravated rape, forcible rape, and simple rape.

Proposed law renames the crime of aggravated rape, forcible rape, and simple rape to "first degree rape", "second degree rape", and "third degree rape", respectively.

Proposed law adds that third degree rape is committed when the offender acts without the consent of the victim.

Proposed law changes a possible penalty for third degree rape from imprisonment with or without hard labor to imprisonment at hard labor.

Proposed law otherwise retains present law.

Present law provides that sexual battery is the intentional touching of the anus or genitals of the victim by the offender using any instrumentality or any part of the body of the offender, or the touching of the anus or genitals of the offender by the victim using any instrumentality or any part of the body of the victim, when any of the following occur:

- (1) The offender acts without the consent of the victim.
- (2) The act is consensual but the other person, who is not the spouse of the offender, has

not yet attained 15 years of age and is at least three years younger than the offender.

- (3) The offender is 17 years of age or older and any of the following exist:
- (a) The act is without consent of the victim, and the victim is prevented from resisting the act because either of the following conditions exist:
 - (i) The victim has paraplegia, quadriplegia, or is otherwise physically incapable of preventing the act due to a physical disability.
 - (ii) The victim is incapable, through unsoundness of mind, of understanding the nature of the act, and the offender knew or should have known of the victim's incapacity.
 - (b) The act is without consent of the victim, and the victim is 65 years of age or older.

Proposed law retains present law and adds that the prohibited touching can occur directly or through clothing.

Proposed law creates the crime of misdemeanor sexual battery.

Proposed law provides that misdemeanor sexual battery is the intentional touching of the breasts or buttocks of the victim by the offender using any instrumentality or any part of the body of the offender, directly or through clothing, or the intentional touching of the breasts or buttocks of the offender by the victim using any instrumentality or any part of the body of the victim, directly or through clothing, when the offender acts without the consent of the victim.

Proposed law provides that misdemeanor sexual battery is punishable by a fine of up to \$1,000, or imprisonment for up to six months, or both. Proposed law further provides that an offender convicted of misdemeanor sexual battery cannot have his conviction set aside and prosecution dismissed in accordance with certain provisions of present law. Proposed law further provides that an offender convicted of misdemeanor sexual battery is not subject to any provisions of present law that are applicable exclusively to sex offenders, including but not limited to provisions of present law that require the registration of the offender and notice to the public.

Proposed law authorizes and directs the La. Law Institute to change all references to the crimes of "aggravated rape", "forcible rape", and "simple rape" in present law, not already amended by proposed law, in the manner it deems appropriate in order to make those provisions consistent with the provisions of proposed law.

Relative to registration sex offenders, proposed law includes an effective date of occurrence of the offense such that the terms "first degree rape", "second degree rape", and "third degree rape" apply only to occurrences on or after August 1, 2015.

Proposed law adds the terms "first degree rape", "second degree rape", and "third degree rape" to the enumeration of "sexual offenses" in the present law.

Proposed law provides that those found guilty of "first degree rape", "second degree rape", and "third degree rape" shall be subject to the requirement to register as a sex offender or a child predator.

Proposed law amends the Children's Code to provide for children who admit an allegation or are adjudicated delinquent based upon the offense of "first degree rape" or "second degree rape" shall be informed of the requirements for registration as a sex offender.

Effective August 1, 2015.

(Amends R.S. 14:42(A)(intro para) and 42(D)(1), 42.1, 43, and 43.1(A), R.S. 15:541(2)(a), (b) and (c) and (24)(a) and 542(A)(3)(a) and (b), and Children's Code Art. 884.1(A)(1) and (2); adds R.S. 14:43.1.1)

Summary of Amendments Adopted by Senate

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

1. Adds that third degree rape under proposed law is committed when the offender acts without the consent of the victim.
2. Changes a possible penalty for third degree rape from imprisonment with or without hard labor to imprisonment at hard labor.

Senate Floor Amendments to engrossed bill

1. Revises present law regarding registration of sex offenders to include proposed law.