

2015 Regular Session

HOUSE BILL NO. 139

BY REPRESENTATIVE HODGES AND SENATOR MORRELL

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

CRIME/SEX OFFENSES: To amend references of "simple rape", "forcible rape", and "aggravated rape" to "first degree rape", "second degree rape", and "third degree rape" respectively

1 AN ACT

2 To amend and reenact R.S. 13:2106(B), R.S. 14:2(B)(9), (10), and (11), 30(A)(1),

3 30.1(A)(2), 32.6(A)(2), 42(A)(introductory paragraph) and (D)(1),

4 42.1(A)(introductory paragraph) and (B), 43(A)(introductory paragraph) and (B),

5 43.6(A) and (B)(1), 50.2, and 107.2(A), R.S. 15:302, 469.1, 541(2)(a), (b), and (c)

6 and (24)(a), 542(A)(2) and (3)(a) and (b), 571.3(B)(3)(b), (c), and (d),

7 574.4(D)(1)(h), 708(C), 711(G)(1), 811(C) and (E), 831(D), 832(C)(2), 833(B)(3),

8 833.2(B), 893.1(1), and 1111(I)(1), R.S. 40:1300.13(E)(6), R.S. 48:261(E)(2), Code

9 of Criminal Procedure Articles 336.1, 465(A)(39) and (40), 571, 814(A)(8), (8.1),

10 (9), (10), (11), (12), and (13), 890.1(D)(9), (10), and (11), 893.3(E)(1)(b), and

11 905.4(A)(1) and (3), Code of Evidence Article 412.1, and Children's Code Articles

12 305(A)(1)(introductory paragraph) and (b), (B)(1)(b) and (2)(f) and (g), 855(B)(7)(a)

13 and (b), 857(A)(4) and (8) and (C), 858(B), 879(B)(2), 884.1(A)(1) and (2),

14 897(B)(1)(c), 897.1(A), and 901(E) and to enact R.S. 14:42(E), 42.1(C), and 43(C),

15 relative to rape; to provide relative to the crimes of aggravated rape, forcible rape,

16 and simple rape; to change all references of "aggravated rape" to "first degree rape";

17 to change all references of "forcible rape" to "second degree rape"; to change all

1 references of "simple rape" to "third degree rape"; to provide relative to the effects
2 of these changes; and to provide for related matters.

3 Be it enacted by the Legislature of Louisiana:

4 Section 1. R.S. 14:2(B)(9), (10), and (11), 30(A)(1), 30.1(A)(2), 32.6(A)(2),
5 42(A)(introductory paragraph) and (D)(1), 42.1(A)(introductory paragraph) and (B),
6 43(A)(introductory paragraph) and (B), 43.6(A) and (B)(1), 50.2, and 107.2(A) are hereby
7 amended and reenacted and R.S. 14:42(E), 42.1(C), and 43(C) are hereby enacted to read
8 as follows:

9 §2. Definitions

10 * * *

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

18 * * *

- 19 (9) Aggravated or first degree rape.
- 20 (10) Forcible or second degree rape.
- 21 (11) Simple or third degree rape.

22 * * *

23 §30. First degree murder

24 A. First degree murder is the killing of a human being:

- 25 (1) When the offender has specific intent to kill or to inflict great bodily
26 harm and is engaged in the perpetration or attempted perpetration of aggravated
27 kidnapping, second degree kidnapping, aggravated escape, aggravated arson,
28 aggravated or first degree rape, forcible or second degree rape, aggravated burglary,
29 armed robbery, assault by drive-by shooting, first degree robbery, second degree

1 robbery, simple robbery, terrorism, cruelty to juveniles, or second degree cruelty to
2 juveniles.

3 * * *

4 §30.1. Second degree murder

5 A. Second degree murder is the killing of a human being:

6 * * *

7 (2) When the offender is engaged in the perpetration or attempted
8 perpetration of aggravated or first degree rape, forcible or second degree rape,
9 aggravated arson, aggravated burglary, aggravated kidnapping, second degree
10 kidnapping, aggravated escape, assault by drive-by shooting, armed robbery, first
11 degree robbery, second degree robbery, simple robbery, cruelty to juveniles, second
12 degree cruelty to juveniles, or terrorism, even though he has no intent to kill or to
13 inflict great bodily harm.

14 * * *

15 §32.6. First degree feticide

16 A. First degree feticide is:

17 * * *

18 (2) The killing of an unborn child when the offender is engaged in the
19 perpetration or attempted perpetration of aggravated or first degree rape, forcible or
20 second degree rape, aggravated arson, aggravated burglary, aggravated kidnapping,
21 second degree kidnapping, assault by drive-by shooting, aggravated escape, armed
22 robbery, first degree robbery, second degree robbery, cruelty to juveniles, second
23 degree cruelty to juveniles, terrorism, or simple robbery, even though he has no
24 intent to kill or inflict great bodily harm.

25 * * *

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

27 A. ~~Aggravated~~ First degree rape is a rape committed upon a person sixty-five
28 years of age or older or where the anal, oral, or vaginal sexual intercourse is deemed

1 to be without lawful consent of the victim because it is committed under any one or
2 more of the following circumstances:

3 * * *

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

7 * * *

8 E. For all purposes, "aggravated rape" and "first degree rape" mean the
9 offense defined by the provisions of this Section and any reference to the crime of
10 aggravated rape is the same as a reference to the crime of first degree rape.

11 §42.1. ~~Foreible~~ Second degree rape

12 A. ~~Foreible~~ Second degree rape is rape committed when the anal, oral, or
13 vaginal sexual intercourse is deemed to be without the lawful consent of the victim
14 because it is committed under any one or more of the following circumstances:

15 * * *

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

20 C. For all purposes, "forcible rape" and "second degree rape" mean the
21 offense defined by the provisions of this Section and any reference to the crime of
22 forcible rape is the same as a reference to the crime of second degree rape.

23 §43. ~~Simple~~ Third degree rape

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

27 * * *

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

4 C. For all purposes, "simple rape" and "third degree rape" mean the offense
5 defined by the provisions of this Section and any reference to the crime of simple
6 rape is the same as a reference to the crime of third degree rape.

7 * * *

8 §43.6. Administration of medroxyprogesterone acetate (MPA) to certain sex
9 offenders

10 A. Notwithstanding any other provision of law to the contrary, upon a first
11 conviction of R.S. 14:42 (~~aggravated or first degree~~ rape), R.S. 14:42.1 (~~forcible or~~
12 second degree ~~rape~~), R.S. 14:43.2 (second degree sexual battery), R.S. 14:81.2(D)(1)
13 (molestation of a juvenile when the victim is under the age of thirteen), and R.S.
14 14:89.1 (aggravated crime against nature), the court may sentence the offender to be
15 treated with medroxyprogesterone acetate (MPA), according to a schedule of
16 administration monitored by the Department of Public Safety and Corrections.

17 B.(1) Notwithstanding any other provision of law to the contrary, upon a
18 second or subsequent conviction of R.S. 14:42 (~~aggravated or first degree~~ rape), R.S.
19 14:42.1 (~~forcible or second degree~~ rape), R.S. 14:43.2 (second degree sexual
20 battery), R.S. 14:81.2(D)(1) (molestation of a juvenile when the victim is under the
21 age of thirteen), and R.S. 14:89.1 (aggravated crime against nature), the court shall
22 sentence the offender to be treated with medroxyprogesterone acetate (MPA)
23 according to a schedule of administration monitored by the Department of Public
24 Safety and Corrections.

25 * * *

26 §50.2. Perpetration or attempted perpetration of certain crimes of violence against
27 a victim sixty-five years of age or older

28 The court in its discretion may sentence, in addition to any other penalty
29 provided by law, any person who is convicted of a crime of violence or of an attempt

1 to commit any of the crimes as defined in R.S. 14:2(B) with the exception of first
2 degree murder (R.S. 14:30), second degree murder (R.S. 14:30.1), aggravated assault
3 (R.S. 14:37), aggravated or first degree rape (R.S. 14:42), and aggravated kidnapping
4 (R.S. 14:44); to an additional three years' imprisonment when the victim of such
5 crime is sixty-five years of age or older at the time the crime is committed.

6 * * *

7 §107.2. Hate crimes

8 A. It shall be unlawful for any person to select the victim of the following
9 offenses against person and property because of actual or perceived race, age,
10 gender, religion, color, creed, disability, sexual orientation, national origin, or
11 ancestry of that person or the owner or occupant of that property or because of actual
12 or perceived membership or service in, or employment with, an organization: first
13 or second degree murder; manslaughter; battery; aggravated battery; second degree
14 battery; aggravated assault with a firearm; terrorizing; mingling harmful substances;
15 simple or third degree rape, forcible or second degree rape, or aggravated or first
16 degree rape; sexual battery, second degree sexual battery; oral sexual battery; carnal
17 knowledge of a juvenile; indecent behavior with juveniles; molestation of a juvenile
18 or a person with a physical or mental disability; simple, second degree, or aggravated
19 kidnapping; simple or aggravated arson; communicating of false information of
20 planned arson; simple or aggravated criminal damage to property; contamination of
21 water supplies; simple or aggravated burglary; criminal trespass; simple, first degree,
22 or armed robbery; purse snatching; extortion; theft; desecration of graves;
23 institutional vandalism; or assault by drive-by shooting.

24 * * *

25 Section 2. R.S. 15:302, 469.1, 541(2)(a), (b), and (c) and (24)(a), 542(A)(2) and
26 (3)(a) and (b), 571.3(B)(3)(b), (c), and (d), 574.4(D)(1)(h), 708(C), 711(G)(1), 811(C) and
27 (E), 831(D), 832(C)(2), 833(B)(3), 833.2(B), 893.1(1), and 1111(I)(1) are hereby amended
28 and reenacted to read as follows:

1 §302. Sentences to prison districts; persons excluded

2 Whenever prison districts have been established the rules of sentencing set
3 forth below shall be followed:

4 ~~A.~~(1) The following persons shall be sentenced to prison districts:

5 ~~(1)~~(a) All persons convicted of misdemeanors and sentenced to
6 imprisonment by any state court within the judicial district.

7 ~~(2)~~(b) All persons convicted of violations of state or parish laws by any
8 municipal court within the judicial district.

9 ~~B.~~(2) The following persons may be sentenced to prison districts:

10 ~~(1)~~(a) Persons convicted of felonies by any state court within the judicial
11 district notwithstanding the conviction ordinarily requires imprisonment in the
12 penitentiary.

13 ~~(2)~~(b) Persons convicted of violations of municipal ordinances and sentenced
14 to imprisonment by the municipal courts of those municipalities which have
15 contracted with the governing authority of the prison district for the keeping of such
16 persons.

17 ~~C.~~(3) The following persons shall not be imprisoned in any prison district:

18 ~~(1)~~(a) Persons sentenced to life imprisonment.

19 ~~(2)~~(b) Persons convicted of treason, aggravated or ~~simple~~ first degree rape,
20 simple or third degree rape, aggravated or simple arson, or aggravated or simple
21 kidnapping.

22 ~~(3)~~(c) Bank and homestead officials convicted of theft by reason of misusing
23 funds of depositors or other funds entrusted to them.

24 ~~(4)~~(d) Notaries public who are defaulters.

25 ~~(5)~~(e) Second or third offenders.

26 ~~(6)~~(f) Persons whose sentences exceed five years.

27 * * *

1 §469.1. Receipt of testimony from victims of certain crimes who are fifteen years
2 of age or younger; closed session of court or in chambers; procedure

3 In cases of simple or third degree rape, attempted simple or third degree rape,
4 aggravated or first degree rape, attempted aggravated or first degree rape, forcible
5 or second degree rape, attempted forcible or second degree rape, or carnal knowledge
6 of a juvenile in which the victim is a child of fifteen years of age or younger, the
7 court, upon its own motion or that of the defendant or state, may order that the
8 testimony of such victim be heard either in closed session of court or in the judge's
9 chambers, in the presence of the judge or jury, the defendant, counsel for the
10 defendant, the family of the defendant, the parents or parent of the victim, the
11 attorney for the state, a reasonable but limited number of members of the public
12 which the court may allow in its discretion under these circumstances, and any other
13 party which the court determines has a valid interest in the proceedings.

14 * * *

15 §541. Definitions

16 For the purposes of this Chapter, the definitions of terms in this Section shall
17 apply:

18 * * *

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

21 (a)(i) Aggravated rape (R.S. 14:42), which occurred prior to August 1, 2015,
22 and which shall include convictions for the perpetration or attempted perpetration of,
23 or conspiracy to commit, aggravated oral sexual battery (formerly R.S. 14:43.4,
24 Repealed by Acts 2001, No. 301, §2) occurring prior to August 15, 2001.

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

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

27 (ii) Second degree rape (R.S. 14:42.1) which occurred on or after August 1,
28 2015.

1 (c)(i) Simple rape under the provisions of R.S. 14:43(A)(1) and (2) which
2 occurred prior to August 1, 2015.

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

5 * * *

6 (24)(a) "Sex offense" means deferred adjudication, adjudication withheld,
7 or conviction for the perpetration or attempted perpetration of or conspiracy to
8 commit human trafficking when prosecuted under the provisions of R.S.
9 14:46.2(B)(2), R.S. 14:46.3 (trafficking of children for sexual purposes), R.S. 14:89
10 (crime against nature), R.S. 14:89.1 (aggravated crime against nature), R.S.
11 14:89.2(B)(3) (crime against nature by solicitation), R.S. 14:80 (felony carnal
12 knowledge of a juvenile), R.S. 14:81 (indecent behavior with juveniles), R.S.14:81.1
13 (pornography involving juveniles), R.S. 14:81.2 (molestation of a juvenile or a
14 person with a physical or mental disability), R.S. 14:81.3 (computer-aided
15 solicitation of a minor), R.S. 14:81.4 (prohibited sexual conduct between an educator
16 and student), R.S. 14:82.1 (prostitution; persons under eighteen), R.S. 14:82.2(C)(4)
17 and (5) (purchase of commercial sexual activity), R.S. 14:92(A)(7) (contributing to
18 the delinquency of juveniles), R.S. 14:93.5 (sexual battery of the infirm), R.S.
19 14:106(A)(5) (obscenity by solicitation of a person under the age of seventeen), R.S.
20 14:283 (video voyeurism), R.S. 14:41 (rape), R.S. 14:42 (aggravated or first degree
21 rape), R.S. 14:42.1 (forcible or second degree rape), R.S. 14:43 (simple or third
22 degree rape), R.S. 14:43.1 (sexual battery), R.S. 14:43.2 (second degree sexual
23 battery), R.S. 14:43.3 (oral sexual battery), R.S. 14:43.5 (intentional exposure to
24 AIDS virus), or a second or subsequent conviction of R.S. 14:283.1 (voyeurism),
25 committed on or after June 18, 1992, or committed prior to June 18, 1992, if the
26 person, as a result of the offense, is under the custody of the Department of Public
27 Safety and Corrections on or after June 18, 1992. A conviction for any offense
28 provided in this definition includes a conviction for the offense under the laws of
29 another state, or military, territorial, foreign, tribal, or federal law which is equivalent

1 to an offense provided for in this Chapter, unless the tribal court or foreign
2 conviction was not obtained with sufficient safeguards for fundamental fairness and
3 due process for the accused as provided by the federal guidelines adopted pursuant
4 to the Adam Walsh Child Protection and Safety Act of 2006.

5 * * *

6 §542. Registration of sex offenders and child predators

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

10 * * *

11 (2) Any juvenile who has pled guilty or has been convicted of a sex offense
12 or second degree kidnapping as provided for in Children's Code Article 305 or 857,
13 with the exception of simple or third degree rape but including any conviction for an
14 offense under the laws of another state, or military, territorial, foreign, tribal, or
15 federal law which is equivalent to the offenses listed herein for which a juvenile
16 would have to register; and

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

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

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

26 * * *

27 §571.3. Diminution of sentence for good behavior

28 * * *

1 B.

2 * * *

3 (3) A person shall not be eligible for diminution of sentence for good
4 behavior if he has been convicted of or pled guilty to, or where adjudication has been
5 deferred or withheld for, a violation of any one of the following offenses:

6 * * *

7 (b) Aggravated or first degree rape (R.S. 14:42).

8 (c) Forcible or second degree rape (R.S. 14:42.1).

9 (d) Simple or third degree rape (R.S. 14:43).

10 * * *

11 §574.4. Parole; eligibility

12 * * *

13 D.(1) Notwithstanding any provision of law to the contrary, any person
14 serving a sentence of life imprisonment who was under the age of eighteen years at
15 the time of the commission of the offense, except for a person serving a life sentence
16 for a conviction of first degree murder (R.S. 14:30) or second degree murder (R.S.
17 14:30.1), shall be eligible for parole consideration pursuant to the provisions of this
18 Subsection if all of the following conditions have been met:

19 * * *

20 (h) If the offender was convicted of aggravated or first degree rape, he shall
21 be designated a sex offender and upon release shall comply with all sex offender
22 registration and notification provisions as required by law.

23 * * *

24 §708. Labor by prisoners permitted; workday release program; indemnification

25 * * *

26 C. This Section shall not apply to ~~criminals~~ persons convicted of crimes of
27 first or second degree murder, attempted first or second degree murder, aggravated
28 or first degree rape, attempted aggravated or first degree rape, forcible or second
29 degree rape, aggravated kidnapping, aggravated arson, armed robbery, or attempted

1 armed robbery, or persons sentenced as habitual offenders under R.S. 15:529.1,
2 except during the last six months of their terms.

3 * * *

4 §711. Work release program

5 * * *

6 G.(1) Any inmate who has been convicted of forcible or second degree rape
7 (R.S. 14:42.1), aggravated arson (R.S. 14:51), armed robbery (R.S. 14:64), attempted
8 murder (R.S. 14:27 and 29), attempted armed robbery (R.S. 14:27 and 64), and
9 persons sentenced as habitual offenders under R.S. 15:529.1 shall be eligible to
10 participate in a work release program during the last six months of their terms.
11 Notwithstanding the provisions of this Section and unless the inmate is eligible at an
12 earlier date, those inmates who have served a minimum of fifteen years in the
13 custody of the department or the sheriff for those crimes enumerated in this Section,
14 shall be eligible to participate in a work release program during the last twelve
15 months of their term.

16 * * *

17 §811. Inmate contact with persons outside of parish or multiparish prison;
18 temporary release or furlough

19 * * *

20 C. An inmate sentenced to the Department of Public Safety and Corrections
21 who is in the custody of the sheriff shall not be eligible for a furlough unless that
22 inmate is in compliance with the Department of Public Safety and Corrections
23 standards for such a furlough.

24 * * *

25 E. Except in cases of serious illness or death of a member of the inmate's
26 family, or for an interview of the inmate by a prospective employer in which case the
27 inmate may be released only in security escort with Department of Public Safety and
28 Corrections authorized personnel, any inmate who has been convicted of first degree
29 murder (R.S. 14:30), second degree murder (R.S. 14:30.1), aggravated or first degree

1 rape (R.S. 14:42), attempted aggravated or first degree rape (R.S. 14:27;~~14:~~ and 42),
 2 forcible or second degree rape (R.S. 14:42.1), aggravated kidnapping (R.S. 14:44),
 3 aggravated arson (R.S. 14:51), armed robbery (R.S. 14:64), attempted murder (R.S.
 4 14:27;~~14:~~ and 29), attempted armed robbery (R.S. 14:27;~~14:~~ and 64), producing,
 5 manufacturing, distributing, or dispensing or possession with intent to produce,
 6 manufacture, distribute, or dispense a controlled dangerous substance classified in
 7 Schedule I or Schedule II of R.S. 40:964, and persons sentenced as habitual
 8 offenders under R.S. 15:529.1 shall be ineligible for temporary release or furloughs
 9 as provided for herein, except during the last six months of their terms.

10 * * *

11 §831. Medical care of inmates; testing

12 * * *

13 D. For purposes of this Section "inmate" shall mean an individual who has
 14 been committed to the department for confinement after final sentence. For purposes
 15 of the prohibition against the use of state general or dedicated funds for organ
 16 transplants, "inmate" shall mean an individual who has been committed to the
 17 department for confinement for the crime of first or second degree murder, or the
 18 crime of aggravated or first degree rape and has exhausted all state and federal
 19 appellate and post conviction and relief remedies.

20 §832. Work by inmates; allowance

21 * * *

22 C. The department may enter into contractual agreements for the use of
 23 inmate labor by any department, board, commission, or agency of this state
 24 responsible for the conservation of natural resources or the construction and
 25 maintenance of public works, subject to the following restrictions:

26 * * *

27 (2) No inmate shall be assigned to maintenance work at public facilities
 28 outside the department in accordance with this Section when such work requires
 29 housing the inmate in a parish prison or other local housing facility and the inmate

1 has been convicted of first or second degree murder, attempted first or second degree
2 murder, aggravated or first degree rape, attempted aggravated or first degree rape,
3 forcible or second degree rape, aggravated kidnapping, aggravated arson, armed
4 robbery, attempted armed robbery, or the inmate has been sentenced as an habitual
5 offender under R.S. 15:529.1 except during the last six months of his term.

6 * * *

7 §833. Inmate contact with persons outside institution; temporary release

8 * * *

9 B.

10 * * *

11 (3) No inmate serving a sentence for conviction of first degree murder (R.S.
12 14:30), second degree murder (R.S. 14:30.1), attempted murder (R.S. 14:27 and 29),
13 aggravated or first degree rape (R.S. 14:42), attempted aggravated or first degree
14 rape (R.S. 14:27 and 42), forcible or second degree rape (R.S. 14:42.1), aggravated
15 kidnapping (R.S. 14:44), aggravated arson (R.S. 14:51), armed robbery (R.S. 14:64),
16 attempted armed robbery (R.S. 14:27 and 64), or producing, manufacturing,
17 distributing, or dispensing or possession with intent to produce, manufacture,
18 distribute, or dispense a controlled dangerous substance classified in Schedule I or
19 II of R.S. 40:964, nor any inmate sentenced as a habitual offender under R.S.
20 15:529.1 shall be released from the institution to which he is assigned except under
21 security escort and then only in the following circumstances: treatment for serious
22 illness; visits with dying family members; funerals of family members; participation
23 in programs at other correctional institutions; speaking assignments; work details;
24 court appearances; participation in charity boxing matches; performances of any
25 organized vocal or instrumental group at any civic or charitable function; or religious
26 services.

27 * * *

28 §833.2. Temporary release of inmate for limited purposes

29 * * *

1 B. Notwithstanding any other provision of law to the contrary, the secretary
 2 may authorize the temporary release of any inmate, except an inmate sentenced to
 3 death, serving a sentence for conviction of first degree murder (R.S. 14:30), second
 4 degree murder (R.S. 14:30.1), attempted murder (R.S. 14:27 and 29), aggravated or
 5 first degree rape (R.S. 14:42), attempted aggravated or first degree rape (R.S. 14:27
 6 and 42), forcible or second degree rape (R.S. 14:42.1), aggravated kidnapping (R.S.
 7 14:44), aggravated arson (R.S. 14:51), armed robbery (R.S. 14:64), attempted armed
 8 robbery (R.S. 14:27 and 64), or producing, manufacturing, distributing, or dispensing
 9 or possession with intent to produce, manufacture, distribute, or dispense a controlled
 10 dangerous substance classified in Schedule I or II of R.S. 40:964 or any inmate
 11 sentenced as a habitual offender under R.S. 15:529.1, when that inmate is confined
 12 to an acute care hospital or nursing home with a condition that totally prevents
 13 mobility, including but not limited to prolonged coma or mechanical ventilation.

14 * * *

15 §893.1. Inmates who may not be assigned to J. Levy Dabadie Correctional Center
 16 The Department of Public Safety and Corrections, corrections services, shall
 17 not assign any inmate included in the categories listed below to serve any portion of
 18 his term at the correctional institution at J. Levy Dabadie Correctional Center:

19 (1) Inmates who have been convicted of first or second degree murder,
 20 aggravated or first degree rape, aggravated kidnapping, armed robbery, aggravated
 21 arson, or a sex offense as defined in R.S. 15:541.

22 * * *

23 §1111. Work release program

24 * * *

25 I.(1) Any inmate who has been convicted of forcible or second degree rape
 26 (R.S. 14:42.1), aggravated arson (R.S. 14:51), armed robbery (R.S. 14:64), attempted
 27 murder (R.S. 14:27 and 29), or attempted armed robbery (R.S. 14:27 and 64), shall
 28 be eligible to participate in a work release program during the last six months of his
 29 term. Any person sentenced as a habitual offender pursuant to R.S. 15:529.1 shall

1 be eligible to participate in a work release program during the last year of his term
2 if the offender has obtained a low-risk level designation determined by a validated
3 risk assessment instrument approved by the secretary of the Department of Public
4 Safety and Corrections. Notwithstanding the provisions of this Section and unless
5 the inmate is eligible at an earlier date, those inmates who have served a minimum
6 of fifteen years in the custody of the department for those crimes enumerated in this
7 Section shall be eligible to participate in a work release program during the last
8 twelve months of their terms.

9 * * *

10 Section 3. R.S. 13:2106(B) is hereby amended and reenacted to read as follows:

11 §2106. Particular courts; nonrefundable fee; assessment and disposition

12 * * *

13 B. In each criminal proceeding, involving family violence as defined in R.S.
14 46:2121.1, simple or third degree rape, forcible or second degree rape, aggravated
15 or first degree rape, aggravated assault, aggravated battery, simple battery,
16 aggravated kidnapping, simple kidnapping, or false imprisonment, or any attempt to
17 commit the aforementioned crimes, a nonrefundable fee of twenty-five dollars shall
18 be collected by the clerk of the city court of Slidell and the clerk of the Twenty-
19 Second Judicial District Court, St. Tammany Parish, which shall be in addition to all
20 other fines, costs, or forfeitures lawfully imposed. If the defendant is found guilty
21 and placed on probation, the court shall, as a condition of probation require the
22 defendant to pay the additional fee at the time the defendant is placed on probation.
23 If the sentence of the court is incarceration, the fee shall be collected at the time of
24 imposition of sentence.

25 * * *

26 Section 4. R.S. 40:1300.13(E)(6) is hereby amended and reenacted to read as
27 follows:

28 §1300.13. HIV-related testing; consent; exceptions

29 * * *

1 E. The provisions of Subsections A through D of this Section shall not apply
2 to the performance of an HIV-related test:

3 * * *

4 (6) On any person who has been arrested, indicted, or convicted for the
5 crimes of aggravated or first degree rape, forcible or second degree rape, simple or
6 third degree rape, or crime against nature as defined by R.S. 14:89(A)(2) when
7 required by a court to undergo an HIV-related test.

8 Section 5. R.S. 48:261(E)(2) is hereby amended and reenacted to read as follows:
9 §261. Maintenance work by department employees; exceptions

10 * * *

11 E. In no event shall this Section be construed to permit the use of prisoners
12 who:

13 * * *

14 (2) Have been convicted one or more times of the crimes of aggravated or
15 first degree rape, homicide in the first or second degree, armed robbery, kidnapping,
16 aggravated escape, or any attempt to commit any of the above enumerated offenses.

17 * * *

18 Section 6. Code of Criminal Procedure Articles 336.1, 465(A)(39) and (40), 571,
19 814(A)(8), (8.1), (9), (10), (11), (12), and (13), 890.1(D)(9), (10), and (11), 893.3(E)(1)(b),
20 and 905.4(A)(1) and (3) are hereby amended and reenacted to read as follows:

21 Art. 336.1. Conditions of release on bail; aggravated or first degree rape

22 A. In making a determination relative to the granting of release or the
23 conditions of such release of a defendant who is alleged to have committed the
24 offense of aggravated or first degree rape as provided in R.S. 14:42(A)(4), the court
25 shall take into consideration the previous criminal record of the defendant; any
26 potential threat or danger the defendant poses to the victim, the family of the victim,
27 or to any member of the public, especially children; and any statistical evidence
28 prepared by the United States Department of Justice relative to the likelihood of such
29 defendant or any person in general who has raped or molested victims under the age

1 of thirteen years to commit sexual offenses against a victim under the age of thirteen
2 in the future.

3 B. Any person who is indicted for the crime of aggravated or first degree
4 rape as provided in R.S. 14:42 shall, as a condition of bail, be required to wear an
5 electronic monitoring device and to be placed under active electronic monitoring.
6 The conditions of the electronic monitoring shall be determined by the court, and
7 may include but not be limited to limitation of the defendant's activities outside of
8 the home and curfew. The defendant may be required to pay a reasonable
9 supervision fee to the supervising agency to defray the cost of the required electronic
10 monitoring. A violation of the conditions of bail may be punishable by the forfeiture
11 of bail and the issuance of a bench warrant for the defendant's arrest or remanding
12 the defendant to custody or a modification of the terms of bail.

13 * * *

14 Art. 465. Specific indictment forms

15 A. The following forms of charging offenses may be used, but any other
16 forms authorized by this title may also be used:

17 * * *

18 39. Aggravated Rape or First Degree Rape--A.B. committed aggravated or
19 first degree rape upon C.D.

20 40. Simple Rape or Third Degree Rape--A.B. committed simple or third
21 degree rape upon C.D.

22 * * *

23 Art. 571. Crimes for which there is no time limitation

24 There is no time limitation upon the institution of prosecution for any crime
25 for which the punishment may be death or life imprisonment or for the crime of
26 forcible or second degree rape (R.S. 14:42.1).

27 * * *

1 Art. 814. Responsive verdicts; in particular

2 A. The only responsive verdicts which may be rendered when the indictment
3 charges the following offenses are:

4 * * *

5 8. Aggravated Rape or First Degree Rape:

6 Guilty.

7 Guilty of attempted aggravated or first degree rape.

8 Guilty of forcible or second degree rape.

9 Guilty of attempted forcible or second degree rape.

10 Guilty of sexual battery.

11 Guilty of simple or third degree rape.

12 Guilty of attempted simple or third degree rape.

13 Guilty of oral sexual battery.

14 Not guilty.

15 8.1. Aggravated or first degree rape of a child under the age of thirteen:

16 Guilty.

17 Guilty of attempted aggravated or first degree rape.

18 Guilty of forcible or second degree rape.

19 Guilty of attempted forcible or second degree rape.

20 Guilty of simple or third degree rape.

21 Guilty of attempted simple or third degree rape.

22 Guilty of sexual battery.

23 Guilty of molestation of a juvenile or a person with a physical or mental
24 disability.

25 Guilty of attempted molestation of a juvenile or a person with a physical or
26 mental disability.

27 Guilty of indecent behavior with a juvenile.

28 Guilty of attempted indecent behavior with a juvenile.

29 Not guilty.

1 9. Attempted Aggravated Rape or Attempted First Degree Rape:

2 Guilty.

3 Guilty of attempted forcible or second degree rape.

4 Guilty of attempted simple or third degree rape.

5 Not guilty.

6 10. Forcible Rape or Second Degree Rape:

7 Guilty.

8 Guilty of attempted forcible or second degree rape.

9 Guilty of simple or third degree rape.

10 Guilty of attempted simple or third degree rape.

11 Guilty of sexual battery.

12 Not guilty.

13 11. Attempted Forcible Rape or Attempted Second Degree Rape:

14 Guilty.

15 Guilty of attempted simple or third degree rape.

16 Not guilty.

17 12. Simple Rape or Third Degree Rape:

18 Guilty.

19 Guilty of attempted simple or third degree rape.

20 Guilty of sexual battery.

21 Not guilty.

22 13. Attempted Simple Rape or Attempted Third Degree Rape:

23 Guilty.

24 Not guilty.

25 * * *

26 Art. 890.1. Waiver of minimum mandatory sentences; procedure; exceptions

27 * * *

1 D. The provisions of this Article shall not apply to a sex offense as defined
2 in R.S. 15:541 or to any of the following crimes of violence:

3 * * *

4 (9) R.S. 14:42 (Aggravated or first degree rape).

5 (10) R.S. 14:42.1 (Forcible or second degree rape).

6 (11) R.S. 14:43 (Simple or third degree rape).

7 * * *

8 Art. 893.3. Sentence imposed on felony or specifically enumerated misdemeanor in
9 which firearm was possessed, used, or discharged

10 * * *

11 E.(1)

12 * * *

13 (b) A "violent felony" for the purposes of this Paragraph is: second degree
14 sexual battery, aggravated burglary, carjacking, armed robbery, second degree
15 kidnapping, manslaughter, or forcible or second degree rape.

16 * * *

17 Art. 905.4. Aggravating circumstances

18 A. The following shall be considered aggravating circumstances:

19 (1) The offender was engaged in the perpetration or attempted perpetration
20 of aggravated or first degree rape, forcible or second degree rape, aggravated
21 kidnapping, second degree kidnapping, aggravated burglary, aggravated arson,
22 aggravated escape, assault by drive-by shooting, armed robbery, first degree robbery,
23 second degree robbery, simple robbery, cruelty to juveniles, second degree cruelty
24 to juveniles, or terrorism.

25 * * *

26 (3) The offender has been previously convicted of an unrelated murder,
27 aggravated or first degree rape, aggravated burglary, aggravated arson, aggravated
28 escape, armed robbery, or aggravated kidnapping.

29 * * *

1 Section 7. Code of Evidence Article 412.1 is hereby amended and reenacted to read
2 as follows:

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

4 When an accused is charged with the crime of aggravated or first degree rape,
5 forcible or second degree rape, simple or third degree rape, sexual battery, or second
6 degree sexual battery, the manner and style of the victim's attire shall not be
7 admissible as evidence that the victim encouraged or consented to the offense;
8 however, items of clothing or parts thereof may be introduced in order to establish
9 the presence or absence of the elements of the offense and the proof of its
10 occurrence.

11 Section 8. Children's Code Articles 305(A)(1)(introductory paragraph) and (b),
12 (B)(1)(b) and (2)(f) and (g), 855(B)(7)(a) and (b), 857(A)(4) and (8) and (C), 858(B),
13 879(B)(2), 884.1(A)(1) and (2), 897(B)(1)(c), 897.1(A), and 901(E) are hereby amended
14 and reenacted to read as follows:

15 Art. 305. Divestiture of juvenile court jurisdiction; original criminal court
16 jurisdiction over children; when acquired

17 A.(1) When a child is fifteen years of age or older at the time of the
18 commission of first degree murder, second degree murder, aggravated or first degree
19 rape, or aggravated kidnapping, he is subject to the exclusive jurisdiction of the
20 juvenile court until either:

21 * * *

22 (b) The juvenile court holds a continued custody hearing pursuant to Articles
23 819 and 820 and finds probable cause that he committed one of these offenses,
24 whichever occurs first. During this hearing, when the child is charged with
25 aggravated or first degree rape, the court shall inform him that if convicted he shall
26 register as a sex offender for life, pursuant to Chapter 3-B of Title 15 of the
27 Louisiana Revised Statutes of 1950.

28 * * *

1 B.(1) When a child is fifteen years of age or older at the time of the
2 commission of any of the offenses listed in Subparagraph (2) of this Paragraph, he
3 is subject to the exclusive jurisdiction of the juvenile court until whichever of the
4 following occurs first:

5 * * *

6 (b) The juvenile court holds a continued custody hearing and finds probable
7 cause that the child has committed any of the offenses listed in Subparagraph (2) of
8 this Paragraph and a bill of information charging any of the offenses listed in
9 Subparagraph (2) of this Paragraph is filed. During this hearing, when the child is
10 charged with forcible or second degree rape or second degree kidnapping, the court
11 shall inform him that if convicted he shall register as a sex offender for life, pursuant
12 to Chapter 3-B of Title 15 of the Louisiana Revised Statutes of 1950.

13 (2)

14 * * *

15 (f) Forcible or second degree rape.

16 (g) Simple or third degree rape.

17 * * *

18 Art. 855. Advice of rights at appearance to answer

19 * * *

20 B. If the child is capable, the court shall then advise the child of the
21 following items in terms understandable to the child:

22 * * *

23 (7) The possible consequences of his admission that the allegations are true,
24 including the maximum and minimal dispositions which the court may impose
25 pursuant to Articles 897 through 900. In addition, if the child is fourteen years of
26 age or older and the petition charges the child with the perpetration, attempted
27 perpetration, or conspiracy to commit any of the following offenses, the court shall
28 inform the child that, if he admits to allegations of the petition, or the allegations of
29 the petition are found to be true, he may be required to register as a sex offender

1 pursuant to Chapter 3-B of Title 15 of the Louisiana Revised Statutes of 1950, and
2 the court shall inform the child regarding applicable required registrations and their
3 duration:

4 (a) Aggravated or first degree rape as defined in R.S. 14:42.

5 (b) Forcible or second degree rape as defined in R.S. 14.42.1.

6 * * *

7 Art. 857. Transfers for criminal prosecution; authority

8 A. The court on its own motion or on motion of the district attorney may
9 conduct a hearing to consider whether to transfer a child for prosecution to the
10 appropriate court exercising criminal jurisdiction if a delinquency petition has been
11 filed which alleges that a child who is fourteen years of age or older at the time of
12 the commission of the alleged offense but is not otherwise subject to the original
13 jurisdiction of a court exercising criminal jurisdiction has committed any one or
14 more of the following crimes:

15 * * *

16 (4) Aggravated or first degree rape.

17 * * *

18 (8) Forcible or second degree rape if the rape is committed upon a child at
19 least two years younger than the rapist.

20 * * *

21 C.(1) An adult who is charged with an offense committed at the time he was
22 a child for which the time limitation for the institution of prosecution pursuant to
23 Code of Criminal Procedure ~~Art.~~ Article 571 has not lapsed and for which he was
24 subject to prosecution as an adult due to his age at the time the offense was
25 committed shall be prosecuted as an adult in the appropriate court exercising
26 criminal jurisdiction. If convicted, he shall be punished as an adult as provided by
27 law.

28 (2) An adult who is charged with an offense committed at the time he was
29 a child for which the time limitation for the institution of prosecution pursuant to

1 Code of Criminal Procedure ~~Art.~~ Article 571 has not lapsed and for which he was not
 2 subject to prosecution as an adult due to his age at the time the offense was
 3 committed shall be prosecuted as an adult in the appropriate court exercising
 4 criminal jurisdiction. If convicted, he shall be committed to the custody of the
 5 Department of Public Safety and Corrections to be confined in secure placement for
 6 a period of time as determined by the court not to exceed the maximum amount of
 7 confinement he could have been ordered to serve had he been adjudicated for the
 8 offense as a child at the time the offense was committed.

9 Art. 858. Motion for transfer; notice

10 * * *

11 B. Notice in writing of the time, place, and purpose of the hearing shall be
 12 given to the child and his parents and other custodian, if any, at least ten days before
 13 the hearing. In addition, if the petition charges the child with second degree
 14 kidnapping, aggravated or first degree rape, or forcible or second degree rape, the
 15 court shall inform the child regarding the applicable registration and duration
 16 requirements in Chapter 3-B of Title 15 of the Louisiana Revised Statutes of 1950.

17 * * *

18 Art. 879. Presence at adjudication hearing; exclusion of witnesses

19 * * *

20 B.

21 * * *

22 (2) Except as otherwise provided by law, in all juvenile delinquency
 23 proceedings involving the violation of first degree murder (R.S. 14:30), second
 24 degree murder (R.S. 14:30.1), aggravated or first degree rape (R.S. 14:42),
 25 aggravated kidnapping (R.S. 14:44), armed robbery (R.S. 14:64), negligent homicide
 26 (R.S. 14:32)₂ or vehicular homicide (R.S. 14:32.1), the court shall allow the victim,
 27 the victim's spouse, children, siblings, parents, grandparents, guardians, and legal
 28 custodians to be present at the adjudication hearing.

29 * * *

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

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

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

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

8 * * *

9 Art. 897. Disposition after adjudication of a felony-grade delinquent act

10 * * *

11 B. As conditions of probation, if ordered pursuant to Subparagraph (A)(3)
12 of this Article:

13 (1) The court shall impose all of the following restrictions:

14 * * *

15 (c) Prohibit the child from possessing a firearm or carrying a concealed
16 weapon, if he has been adjudicated for any of the following offenses and probation
17 is not otherwise prohibited: first or second degree murder; manslaughter; aggravated
18 battery; aggravated or first degree rape, forcible or second degree rape, or simple or
19 third degree rape; aggravated crime against nature as defined by R.S. 14:89.1(A)(1);
20 aggravated kidnapping; aggravated arson; aggravated or simple burglary; armed or
21 simple robbery; burglary of a pharmacy; burglary of an inhabited dwelling;
22 unauthorized entry of an inhabited dwelling; or any violation of the Uniform
23 Controlled Dangerous Substances Law which is a felony or any crime defined as an
24 attempt to commit one of these enumerated offenses.

25 * * *

26 Art. 897.1. Disposition after adjudication of certain felony-grade delinquent acts

27 A. After adjudication of a felony-grade delinquent act based upon a violation
28 of R.S. 14:30, first degree murder; R.S. 14:30.1, second degree murder; R.S. 14:42,
29 aggravated or first degree rape; or R.S. 14:44, aggravated kidnapping, the court shall

Proposed law does all of the following:

- (1) Retains the elements and penalties of the present law crimes of aggravated rape, forcible rape, and simple rape.
- (2) Provides that any reference to the crime of "aggravated rape" is the same as a reference to the crime of "first degree rape", any reference to the crime of "forcible rape" is the same as a reference to the crime of "second degree rape", and any reference to the crime of "simple rape" is the same as a reference to the crime of "third degree rape".
- (3) Amends provisions in the Children's Code, the Code of Criminal Procedure, the Code of Evidence, and Titles 13, 14, 15, 40, and 48 of the La. R.S. of 1950 regarding juvenile court jurisdiction, procedure, and disposition, criminal procedure, criminal sentencing, sex offender registration and notification, diminution of sentence, parole, inmate participation in work-release programs, court costs, and medical testing to reflect the proposed law change in reference of "aggravated rape" to "first degree rape", of "forcible rape" to "second degree rape", and of "simple rape" to "third degree rape".
- (4) Provides that nothing in proposed law alleviates any person arrested, convicted, or adjudicated delinquent of present law aggravated rape, forcible rape, or simple rape prior to the effective date of proposed law from any requirement, obligation, or consequence imposed by law as a result of that arrest, conviction, or adjudication including but not limited to any requirements regarding the setting of bail, sex offender registration and notification, parental rights, probation, parole, sentencing, or any other requirement, obligation, or consequence imposed by law as a result of that arrest, conviction, or adjudication.

(Amends R.S. 14:2(B)(9), (10), and (11), 30(A)(1), 30.1(A)(2), 32.6(A)(2), 42(A)(intro. para.) and (D)(1), 42.1(A)(intro. para.) and (B), 43(A)(intro. para.) and (B), 43.6(A) and (B)(1), 50.2, and 107.2(A), R.S. 15:302, 469.1, 541(2)(a), (b), and (c) and (24)(a), 542(A)(2) and (3)(a) and (b), 571.3(B)(3)(b), (c), and (d), 574.4(D)(1)(h), 708(C), 711(G)(1), 811(C) and (E), 831(D), 832(C)(2), 833(B)(3), 833.2(B), 893.1(1), and 1111(I)(1), R.S. 13:2106(B), R.S. 40:1300.13(E)(6), R.S. 48:261(E)(2), C.Cr.P. Arts. 336.1, 465(A)(39) and (40), 571, 814(A)(8), (8.1), (9), (10), (11), (12), and (13), 890.1(D)(9), (10), and (11), 893.3(E)(1)(b), and 905.4(A)(1) and (3), C.E. Art. 412.1, and Ch.C. Arts. 305(A)(1)(intro. para.) and (b), (B)(1)(intro. para.) and (b) and (2)(f) and (g), 855(B)(7)(a) and (b), 857(A)(4) and (8) and (C), 858(B), 879(B)(2), 884.1(A)(1) and (2), 897(B)(1)(c), 897.1(A), and 901(E); Adds R.S. 14:42(E), 42.1(C), and 43(C))