

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. 14:2(B)(9), (10), and (11), 30(A)(1), 30.1(A)(2), 32.6(A)(2),

3 42(A)(introductory paragraph) and (D)(1), 42.1(A)(introductory paragraph) and (B),

4 43(A)(introductory paragraph) and (B), 43.6(A) and (B)(1), 50.2, and 107.2(A), R.S.

5 15:302, 469.1, 541(2)(a), (b), and (c) and (24)(a), 542(A)(2) and (3)(a) and (b),

6 571.3(B)(3)(b), (c), and (d), 574.4(D)(1)(h), 708(C), 711(G)(1), 811(C) and (E),

7 831(D), 832(C)(2), 833(B)(3), 833.2(B), 893.1(1), and 1111(I)(1), R.S. 13:2106(B),

8 R.S. 40:1300.13(E)(6), R.S. 48:261(E)(2), Code of Criminal Procedure Articles

9 336.1, 465(A)(39) and (40), 571, 814(A)(8), (8.1), (9), (10), (11), (12), and (13),

10 890.1(D)(9), (10), and (11), 893.3(E)(1)(b), and 905.4(A)(1) and (3), Code of

11 Evidence Article 412.1, and Children's Code Articles 305(A)(1)(introductory

12 paragraph) and (b), (B)(1)(introductory paragraph) and (b) and (2)(f) and (g),

13 855(B)(7)(a) and (b), 857(A)(4) and (8) and (C), 858(B), 879(B)(2), 884.1(A)(1) and

14 (2), 897(B)(1)(c), 897.1(A), and 901(E) and to enact R.S. 14:42(E), 42.1(C), and

15 43(C), relative to rape; to provide relative to the crimes of aggravated rape, forcible

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

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

18 all references of "simple rape" to "third degree rape"; to provide relative to the

19 effects of these changes; and to provide for related matters.

1 Be it enacted by the Legislature of Louisiana:

2 Section 1. R.S. 14:2(B)(9), (10), and (11), 30(A)(1), 30.1(A)(2), 32.6(A)(2),
3 42(A)(introductory paragraph) and (D)(1), 42.1(A)(introductory paragraph) and (B),
4 43(A)(introductory paragraph) and (B), 43.6(A) and (B)(1), 50.2, and 107.2(A) are hereby
5 amended and reenacted and R.S. 14:42(E), 42.1(C), and 43(C) are hereby enacted to read
6 as follows:

7 §2. Definitions

8 * * *

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

16 * * *

17 (9) Aggravated or first degree rape.

18 (10) Forcible or second degree rape.

19 (11) Simple or third degree rape.

20 * * *

21 §30. First degree murder

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

23 (1) When the offender has specific intent to kill or to inflict great bodily
24 harm and is engaged in the perpetration or attempted perpetration of aggravated
25 kidnapping, second degree kidnapping, aggravated escape, aggravated arson,
26 aggravated or first degree rape, forcible or second degree rape, aggravated burglary,

1 armed robbery, assault by drive-by shooting, first degree robbery, second degree
2 robbery, simple robbery, terrorism, cruelty to juveniles, or second degree cruelty to
3 juveniles.

4 * * *

5 §30.1. Second degree murder

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

7 * * *

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

15 * * *

16 §32.6. First degree feticide

17 A. First degree feticide is:

18 * * *

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

26 * * *

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

28 A. ~~Aggravated~~ First degree rape is a rape committed upon a person sixty-five
29 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 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

1 (E), 831(D), 832(C)(2), 833(B)(3), 833.2(B), 893.1(1), and 1111(I)(1) are hereby amended
2 and reenacted to read as follows:

3 §302. Sentences to prison districts; persons excluded

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 * * *

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 * * *

1 §571.3. Diminution of sentence for good behavior

2 * * *

3 B.

4 * * *

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

8 * * *

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

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

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

12 * * *

13 §574.4. Parole; eligibility

14 * * *

15 D.(1) Notwithstanding any provision of law to the contrary, any person
16 serving a sentence of life imprisonment who was under the age of eighteen years at
17 the time of the commission of the offense, except for a person serving a life sentence
18 for a conviction of first degree murder (R.S. 14:30) or second degree murder (R.S.
19 14:30.1), shall be eligible for parole consideration pursuant to the provisions of this
20 Subsection if all of the following conditions have been met:

21 * * *

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

25 * * *

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

27 * * *

28 C. This Section shall not apply to ~~criminals~~ persons convicted of crimes of
29 first or second degree murder, attempted first or second degree murder, aggravated

1 Corrections authorized personnel, any inmate who has been convicted of first degree
 2 murder (R.S. 14:30), second degree murder (R.S. 14:30.1), aggravated or first degree
 3 rape (R.S. 14:42), attempted aggravated or first degree rape (R.S. 14:27, ~~14:~~ and 42),
 4 forcible or second degree rape (R.S. 14:42.1), aggravated kidnapping (R.S. 14:44),
 5 aggravated arson (R.S. 14:51), armed robbery (R.S. 14:64), attempted murder (R.S.
 6 14:27, ~~14:~~ and 29), attempted armed robbery (R.S. 14:27, ~~14:~~ and 64), producing,
 7 manufacturing, distributing, or dispensing or possession with intent to produce,
 8 manufacture, distribute, or dispense a controlled dangerous substance classified in
 9 Schedule I or Schedule II of R.S. 40:964, and persons sentenced as habitual
 10 offenders under R.S. 15:529.1 shall be ineligible for temporary release or furloughs
 11 as provided for herein, except during the last six months of their terms.

* * *

13 §831. Medical care of inmates; testing

* * *

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

22 §832. Work by inmates; allowance

* * *

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

* * *

1 court appearances; participation in charity boxing matches; performances of any
2 organized vocal or instrumental group at any civic or charitable function; or religious
3 services.

4 * * *

5 §833.2. Temporary release of inmate for limited purposes

6 * * *

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

20 * * *

21 §893.1. Inmates who may not be assigned to J. Levy Dabadie Correctional Center

22 The Department of Public Safety and Corrections, corrections services, shall
23 not assign any inmate included in the categories listed below to serve any portion of
24 his term at the correctional institution at J. Levy Dabadie Correctional Center:

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

28 * * *

1 §1111. Work release program

2 * * *

3 I.(1) Any inmate who has been convicted of forcible or second degree rape
4 (R.S. 14:42.1), aggravated arson (R.S. 14:51), armed robbery (R.S. 14:64), attempted
5 murder (R.S. 14:27 and 29), or attempted armed robbery (R.S. 14:27 and 64), shall
6 be eligible to participate in a work release program during the last six months of his
7 term. Any person sentenced as a habitual offender pursuant to R.S. 15:529.1 shall
8 be eligible to participate in a work release program during the last year of his term
9 if the offender has obtained a low-risk level designation determined by a validated
10 risk assessment instrument approved by the secretary of the Department of Public
11 Safety and Corrections. Notwithstanding the provisions of this Section and unless
12 the inmate is eligible at an earlier date, those inmates who have served a minimum
13 of fifteen years in the custody of the department for those crimes enumerated in this
14 Section shall be eligible to participate in a work release program during the last
15 twelve months of their terms.

16 * * *

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

18 §2106. Particular courts; nonrefundable fee; assessment and disposition

19 * * *

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

1 If the sentence of the court is incarceration, the fee shall be collected at the time of
2 imposition of sentence.

3 * * *

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

6 §1300.13. HIV-related testing; consent; exceptions

7 * * *

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

10 * * *

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

15 Section 5. R.S. 48:261(E)(2) is hereby amended and reenacted to read as follows:

16 §261. Maintenance work by department employees; exceptions

17 * * *

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

20 * * *

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

24 * * *

25 Section 6. Code of Criminal Procedure Articles 336.1, 465(A)(39) and (40), 571,
26 814(A)(8), (8.1), (9), (10), (11), (12), and (13), 890.1(D)(9), (10), and (11), 893.3(E)(1)(b),
27 and 905.4(A)(1) and (3) are hereby amended and reenacted to read as follows:

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

2 A. In making a determination relative to the granting of release or the
3 conditions of such release of a defendant who is alleged to have committed the
4 offense of aggravated or first degree rape as provided in R.S. 14:42(A)(4), the court
5 shall take into consideration the previous criminal record of the defendant; any
6 potential threat or danger the defendant poses to the victim, the family of the victim,
7 or to any member of the public, especially children; and any statistical evidence
8 prepared by the United States Department of Justice relative to the likelihood of such
9 defendant or any person in general who has raped or molested victims under the age
10 of thirteen years to commit sexual offenses against a victim under the age of thirteen
11 in the future.

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

22 * * *

23 Art. 465. Specific indictment forms

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

26 * * *

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

- 1 Guilty of sexual battery.
- 2 Guilty of molestation of a juvenile or a person with a physical or mental
3 disability.
- 4 Guilty of attempted molestation of a juvenile or a person with a physical or
5 mental disability.
- 6 Guilty of indecent behavior with a juvenile.
- 7 Guilty of attempted indecent behavior with a juvenile.
- 8 Not guilty.
- 9 9. Attempted Aggravated Rape or Attempted First Degree Rape:
- 10 Guilty.
- 11 Guilty of attempted forcible or second degree rape.
- 12 Guilty of attempted simple or third degree rape.
- 13 Not guilty.
- 14 10. Forcible Rape or Second Degree Rape:
- 15 Guilty.
- 16 Guilty of attempted forcible or second degree rape.
- 17 Guilty of simple or third degree rape.
- 18 Guilty of attempted simple or third degree rape.
- 19 Guilty of sexual battery.
- 20 Not guilty.
- 21 11. Attempted Forcible Rape or Attempted Second Degree Rape:
- 22 Guilty.
- 23 Guilty of attempted simple or third degree rape.
- 24 Not guilty.
- 25 12. Simple Rape or Third Degree Rape:
- 26 Guilty.
- 27 Guilty of attempted simple or third degree rape.
- 28 Guilty of sexual battery.
- 29 Not guilty.

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

2 Guilty.

3 Not guilty.

4 * * *

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

6 * * *

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

9 * * *

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

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

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

13 * * *

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

16 * * *

17 E.(1)

18 * * *

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

22 * * *

23 Art. 905.4. Aggravating circumstances

24 A. The following shall be considered aggravating circumstances:

25 (1) The offender was engaged in the perpetration or attempted perpetration
26 of aggravated or first degree rape, forcible or second degree rape, aggravated
27 kidnapping, second degree kidnapping, aggravated burglary, aggravated arson,
28 aggravated escape, assault by drive-by shooting, armed robbery, first degree robbery,

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

3 * * *

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

7 * * *

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

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

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

18 Section 8. Children's Code Articles 305(A)(1)(introductory paragraph) and (b),
19 (B)(1)(introductory paragraph) and (b) and (2)(f) and (g), 855(B)(7)(a) and (b), 857(A)(4)
20 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)
21 are hereby amended and reenacted to read as follows:

22 Art. 305. Divestiture of juvenile court jurisdiction; original criminal court
23 jurisdiction over children; when acquired

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

28 * * *

1 (b) The juvenile court holds a continued custody hearing pursuant to Articles
 2 819 and 820 and finds probable cause that he committed one of these offenses,
 3 whichever occurs first. During this hearing, when the child is charged with
 4 aggravated or first degree rape, the court shall inform him that if convicted he shall
 5 register as a sex offender for life, pursuant to Chapter 3-B of Title 15 of the
 6 Louisiana Revised Statutes of 1950.

7 * * *

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

12 * * *

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

20 (2)

21 * * *

22 (f) Forcible or second degree rape.

23 (g) Simple or third degree rape.

24 * * *

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

26 * * *

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

29 * * *

1 Code of Criminal Procedure ~~Art.~~ Article 571 has not lapsed and for which he was
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 punished as an adult as provided by
5 law.

6 (2) An adult who is charged with an offense committed at the time he was
7 a child for which the time limitation for the institution of prosecution pursuant to
8 Code of Criminal Procedure ~~Art.~~ Article 571 has not lapsed and for which he was not
9 subject to prosecution as an adult due to his age at the time the offense was
10 committed shall be prosecuted as an adult in the appropriate court exercising
11 criminal jurisdiction. If convicted, he shall be committed to the custody of the
12 Department of Public Safety and Corrections to be confined in secure placement for
13 a period of time as determined by the court not to exceed the maximum amount of
14 confinement he could have been ordered to serve had he been adjudicated for the
15 offense as a child at the time the offense was committed.

16 Art. 858. Motion for transfer; notice

17 * * *

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

24 * * *

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

26 * * *

27 B.

28 * * *

1 unauthorized entry of an inhabited dwelling; or any violation of the Uniform
2 Controlled Dangerous Substances Law which is a felony or any crime defined as an
3 attempt to commit one of these enumerated offenses.

4 * * *

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

6 A. After adjudication of a felony-grade delinquent act based upon a violation
7 of R.S. 14:30, first degree murder; R.S. 14:30.1, second degree murder; R.S. 14:42,
8 aggravated or first degree rape; or R.S. 14:44, aggravated kidnapping, the court shall
9 commit the child who is fourteen years or older at the time of the commission of the
10 offense to the custody of the Department of Public Safety and Corrections to be
11 confined in secure placement until the child attains the age of twenty-one years
12 without benefit of parole, probation, suspension of imposition or execution of
13 sentence, or modification of sentence.

14 * * *

15 Art. 901. Disposition guidelines; generally

16 * * *

17 E. The general disposition guidelines set forth in Paragraphs A through D of
18 this Article do not apply when a child has been adjudicated a delinquent for the
19 violation of R.S. 14:30, first degree murder; R.S. 14:30.1, second degree murder;
20 R.S. 14:42, aggravated or first degree rape; R.S. 14:44, aggravated kidnapping; or
21 R.S. 14:64, armed robbery in accordance with Article 897.1.

22 * * *

23 Section 9. Nothing in this Act alleviates any person arrested, convicted, or
24 adjudicated delinquent of aggravated rape, forcible rape, or simple rape prior to the effective
25 date of this Act from any requirement, obligation, or consequence imposed by law as a result
26 of that arrest, conviction, or adjudication including but not limited to any requirements
27 regarding the setting of bail, sex offender registration and notification, parental rights,
28 probation, parole, sentencing, or any other requirement, obligation, or consequence imposed
29 by law as a result of that arrest, conviction, or adjudication.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 139 Original

2015 Regular Session

Hodges

Abstract: Changes references of "aggravated rape" to "first degree rape", of "forcible rape" to "second degree rape", and of "simple rape" to "third degree rape".

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

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 LRS 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))