

2018 Regular Session

SENATE BILL NO. 105

BY SENATORS MORRELL, BARROW, BISHOP AND CARTER

SEX OFFENSES. Provides that a person cannot give consent to sexual conduct while in police custody. (gov sig)

1 AN ACT

2 To enact R.S. 14:41.1, relative to rape and sexual battery; to provide that a person is deemed  
3 incapable of consent to sexual conduct with a police officer when the person is under  
4 arrest or otherwise in police custody; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 14:41.1 is hereby enacted to read as follows:

7 **§41.1. Consent; victim in police custody**

8 **For purposes of this Subpart, a person is deemed incapable of consent**  
9 **when the person is under arrest or otherwise in the actual custody of a police**  
10 **officer or other law enforcement official and the offender is a police officer or**  
11 **other law enforcement official who either:**

12 **(1) Arrested the person or was responsible for maintaining the person in**  
13 **actual custody.**

14 **(2) Knows or reasonably should know that the person is under arrest or**  
15 **otherwise in actual custody.**

16 Section 2. This Act shall become effective upon signature by the governor or, if not  
17 signed by the governor, upon expiration of the time for bills to become law without signature

1 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
2 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
3 effective on the day following such approval.

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The original instrument and the following digest, which constitutes no part  
of the legislative instrument, were prepared by Alden A. Clement Jr.

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## DIGEST

SB 105 Engrossed

2018 Regular Session

Morrell

Present law provides relative to the crimes of rape and sexual battery. Present law further provides that lack of consent is an element of these crimes under certain circumstances.

Proposed law retains present law and adds that for purposes of the present law crimes of rape and sexual battery, a person is deemed incapable of consent when the person is under arrest or otherwise in the actual custody of a police officer or other law enforcement official and the offender is a police officer or other law enforcement official who either:

- (1) Arrested the person or was responsible for maintaining the person in actual custody.
- (2) Knows or reasonably should know that the person is under arrest or otherwise in actual custody.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 14:41.1)