

2015 Regular Session

SENATE BILL NO. 117

BY SENATORS GARY SMITH, MILLS AND MORRELL

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

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

AN ACT

To amend and reenact the introductory paragraph of R.S. 14:42(A) and 42(D)(1), 42.1, 43, and 43.1(A), and to enact R.S. 14:43.1.1, relative to sex offenses; to rename the crimes of "aggravated rape", "forcible rape", and "simple rape" to "first degree rape", "second degree rape", and "third degree rape", respectively; to provide relative to the elements of the crime of sexual battery; to create the crime of misdemeanor sexual battery; to provide for penalties; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

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

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

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

\* \* \*

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

4 \* \* \*

5 §42.1. ~~Foreible~~ **Second degree** rape

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

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

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

16 B. Whoever commits the crime of ~~foreible~~ **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 §43. ~~Simple~~ **Third degree** rape

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

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

28 (2) When the victim, through unsoundness of mind, is temporarily or  
29 permanently incapable of understanding the nature of the act and the offender knew

1 or should have known of the victim's incapacity.

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

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

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

10 §43.1. Sexual battery

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

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

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

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

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

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

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

29 (b) The act is without consent of the victim, and the victim is sixty-five years

1 of age or older.

2 \* \* \*

3 **§43.1.1. Misdemeanor sexual battery**

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

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

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

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

19 Section 2. The Louisiana State Law Institute is hereby authorized and directed to  
 20 change any and all references to the crimes of "aggravated rape", "forcible rape", and  
 21 "simple rape" in current law, not already amended by Section 1 of this Act, in the manner  
 22 it deems appropriate in order to make those provisions consistent with the provisions of  
 23 Section 1 of this Act.

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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 117 Engrossed                      2015 Regular Session                      Gary Smith

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

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

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

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

Proposed law otherwise retains present law.

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

- (1) The offender acts without the consent of the victim.
- (2) The act is consensual but the other person, who is not the spouse of the offender, has not yet attained 15 years of age and is at least three years younger than the offender.
- (3) The offender is 17 years of age or older and any of the following exist:
  - (a) The act is without consent of the victim, and the victim is prevented from resisting the act because either of the following conditions exist:
    - (i) The victim has paraplegia, quadriplegia, or is otherwise physically incapable of preventing the act due to a physical disability.
    - (ii) The victim is incapable, through unsoundness of mind, of understanding the nature of the act, and the offender knew or should have known of the victim's incapacity.
  - (b) The act is without consent of the victim, and the victim is 65 years of age or older.

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

Proposed law creates the crime of misdemeanor sexual battery.

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

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

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

Effective August 1, 2015.

(Amends R.S. 14:42(A)(intro para) and 42(D)(1), 42.1, 43, and 43.1(A); adds R.S. 14:43.1.1)

Summary of Amendments Adopted by Senate

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

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