

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.

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AN ACT

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

Be it enacted by the Legislature of Louisiana:

Section 1. The introductory paragraph of R.S. 14:42(A) and (D)(1), 42.1, 43, and 43.1(A) are hereby amended and reenacted, and R.S. 14:42(E) and 43.1.1 are 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:

\* \* \*

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

\* \* \*

**E. For all purposes, "aggravated rape" and "first degree rape" mean the offense defined by the provisions of this Section and any reference to the crime of aggravated rape is the same as a reference to the crime of first degree rape. Any act in violation of the provisions of this Section committed on or after August 1, 2015, shall be referred to as "first degree rape".**

§42.1. Foreible **Second degree** rape

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

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

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

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

**C. For all purposes, "forcible rape" and "second degree rape" mean the offense defined by the provisions of this Section and any reference to the crime of forcible rape is the same as a reference to the crime of second degree rape. Any act in violation of the provisions of this Section committed on or after August 1, 2015, shall be referred to as "second degree rape".**

§43. Simple **Third degree** rape

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

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

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

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

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

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

16 **C. For all purposes, "simple rape" and "third degree rape" mean the**  
 17 **offense defined by the provisions of this Section and any reference to the crime**  
 18 **of simple rape is the same as a reference to the crime of third degree rape. Any**  
 19 **act in violation of the provisions of this Section committed on or after August**  
 20 **1, 2015, shall be referred to as "third degree rape".**

21 §43.1. Sexual battery

22 A. Sexual battery is the intentional touching of the anus or genitals of the  
 23 victim by the offender using any instrumentality or any part of the body of the  
 24 offender, **directly or through clothing**, or the touching of the anus or genitals of the  
 25 offender by the victim using any instrumentality or any part of the body of the  
 26 victim, **directly or through clothing**, when any of the following occur:

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

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

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

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

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

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

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

12 \* \* \*

13 **§43.1.1. Misdemeanor sexual battery**

14 **A. Misdemeanor sexual battery is the intentional touching of the breasts**  
15 **or buttocks of the victim by the offender using any instrumentality or any part**  
16 **of the body of the offender, directly or through clothing, or the intentional**  
17 **touching of the breasts or buttocks of the offender by the victim using any**  
18 **instrumentality or any part of the body of the victim, directly or through**  
19 **clothing, when the offender acts without the consent of the victim.**

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

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

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

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

1 §541. Definitions

2 For the purposes of this Chapter, the definitions of terms in this Section shall  
 3 apply:

4 \* \* \*

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

7 (a)(i) Aggravated rape (R.S. 14:42), **which occurred prior to August 1,**  
 8 **2015, and** which shall include convictions for the perpetration or attempted  
 9 perpetration of, or conspiracy to commit, aggravated oral sexual battery (formerly  
 10 R.S. 14:43.4, Repealed by Acts 2001, No. 301, §2) occurring prior to August 15,  
 11 2001.

12 **(ii) First degree rape (R.S. 14:42), which occurred on or after August 1,**  
 13 **2015.**

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

15 **(ii) Second degree rape (R.S. 14:42.1) which occurred on or after August**  
 16 **1, 2015.**

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

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

21 \* \* \*

22 (24)(a) "Sex offense" means deferred adjudication, adjudication withheld,  
 23 or conviction for the perpetration or attempted perpetration of or conspiracy to  
 24 commit human trafficking when prosecuted under the provisions of R.S.  
 25 14:46.2(B)(2), R.S. 14:46.3 (trafficking of children for sexual purposes), R.S. 14:89  
 26 (crime against nature), R.S. 14:89.1 (aggravated crime against nature), R.S.  
 27 14:89.2(B)(3) (crime against nature by solicitation), R.S. 14:80 (felony carnal  
 28 knowledge of a juvenile), R.S. 14:81 (indecent behavior with juveniles), R.S. 14:81.1  
 29 (pornography involving juveniles), R.S. 14:81.2 (molestation of a juvenile or a  
 30 person with a physical or mental disability), R.S. 14:81.3 (computer-aided

1 solicitation of a minor), R.S. 14:81.4 (prohibited sexual conduct between an educator  
 2 and student), R.S. 14:82.1 (prostitution; persons under eighteen), R.S. 14:82.2(C)(4)  
 3 and (5) (purchase of commercial sexual activity), R.S. 14:92(A)(7) (contributing to  
 4 the delinquency of juveniles), R.S. 14:93.5 (sexual battery of the infirm), R.S.  
 5 14:106(A)(5) (obscenity by solicitation of a person under the age of seventeen), R.S.  
 6 14:283 (video voyeurism), R.S. 14:41 (rape), R.S. 14:42 (aggravated **or first degree**  
 7 rape), R.S. 14:42.1 (forcible **or second degree** rape), R.S. 14:43 (simple **or third**  
 8 **degree** rape), R.S. 14:43.1 (sexual battery), R.S. 14:43.2 (second degree sexual  
 9 battery), R.S. 14:43.3 (oral sexual battery), R.S. 14:43.5 (intentional exposure to  
 10 AIDS virus), or a second or subsequent conviction of R.S. 14:283.1 (voyeurism),  
 11 committed on or after June 18, 1992, or committed prior to June 18, 1992, if the  
 12 person, as a result of the offense, is under the custody of the Department of Public  
 13 Safety and Corrections on or after June 18, 1992. A conviction for any offense  
 14 provided in this definition includes a conviction for the offense under the laws of  
 15 another state, or military, territorial, foreign, tribal, or federal law which is equivalent  
 16 to an offense provided for in this Chapter, unless the tribal court or foreign  
 17 conviction was not obtained with sufficient safeguards for fundamental fairness and  
 18 due process for the accused as provided by the federal guidelines adopted pursuant  
 19 to the Adam Walsh Child Protection and Safety Act of 2006.

\* \* \*

§542. Registration of sex offenders and child predators

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

\* \* \*

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

1 would have to register; and

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

6 (a) Aggravated **or first degree** rape (R.S. 14:42), which shall include those  
7 that have been adjudicated delinquent based upon the perpetration, attempted  
8 perpetration, or conspiracy to commit aggravated oral sexual battery (formerly R.S.  
9 14:43.4, Repealed by Acts 2001, No. 301, §2) occurring prior to August 15, 2001.

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

11 \* \* \*

12 Section 3. Children's Code Art. 884.1(A)(1) and (2) is hereby amended and  
13 reenacted to read as follows:

14 Art. 884.1. Informing the child of sex offender registration and notification  
15 requirements; form

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

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

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

21 \* \* \*

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

27 Section 5. Nothing in this Act alleviates any person arrested, convicted, or  
28 adjudicated delinquent of aggravated rape, forcible rape, or simple rape prior to the effective  
29 date of this Act from any requirement, obligation, or consequence imposed by law as a result  
30 of that arrest, conviction, or adjudication including but not limited to any requirements

1 regarding the setting of bail, sex offender registration and notification, parental rights,  
2 probation, parole, sentencing, or any other requirement, obligation, or consequence imposed  
3 by law as a result of that arrest, conviction, or adjudication.

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PRESIDENT OF THE SENATE

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_