

2015 Regular Session

SENATE BILL NO. 35

BY SENATOR GARY SMITH

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 Code of Criminal Procedure Articles 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), Code of Evidence Article 412.1, the introductory paragraph of Children's Code Article 305(A)(1) and 305(A)(1)(b) and (B)(1)(b) and (2)(f) and (g), 855(B)(7)(a) and (b), 857(A)(4) and (8), 858(B), 879(B)(2), 884.1(A)(1) and (2), 897(B)(1)(c), 897.1(A), and 901(E), R.S. 13:2106(B), R.S. 14:2(B)(9), (10), and (11), 30(A)(1), 30.1(A)(2), 32.6(A)(2), the introductory paragraph of 42(A) and 42(D)(1), 42.1, 43, the introductory paragraph of 43.1(A) and 43.1(A), 43.6(A) and (B)(1), 50.2, and 107.2(A), R.S. 15:302(C)(2), 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(E), 831(D), 832(C)(2), 833(B)(3), 833.2(B), 893.1(1), and 1111(I)(1), R.S. 40:1300.13(E)(6), and R.S. 48:261(E)(2), 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

1 sexual battery; to provide for penalties; and to provide for related matters.

2 Be it enacted by the Legislature of Louisiana:

3 Section 1. Code of Criminal Procedure Articles 336.1, 465(A)(39) and (40), 571,
4 814(A)(8), (8.1), (9), (10), (11), (12), and (13), 890.1(D)(9), (10), and (11), 893.3(E)(1)(b),
5 and 905.4(A)(1) and (3) are hereby amended and reenacted to read as follows:

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

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

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

27 * * *

28 Art. 465. Specific indictment forms

29 A. The following forms of charging offenses may be used, but any other

1 forms authorized by this title may also be used:

2 * * *

3 39. Aggravated Rape **or First Degree Rape**--A.B. committed aggravated
4 rape **or first degree rape** upon C.D.

5 40. Simple Rape **or Third Degree Rape**--A.B. committed simple rape **or**
6 **third degree rape** upon C.D.

7 * * *

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

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

12 * * *

13 Art. 814. Responsive verdicts; in particular

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

16 * * *

17 8. Aggravated Rape **or First Degree Rape**:

18 Guilty.

19 Guilty of attempted aggravated rape **or first degree rape**.

20 Guilty of forcible rape **or second degree rape**.

21 Guilty of attempted forcible rape **or second degree rape**.

22 Guilty of sexual battery.

23 Guilty of simple rape **or third degree rape**.

24 Guilty of attempted simple rape **or third degree rape**.

25 Guilty of oral sexual battery.

26 Not guilty.

27 8.1. Aggravated rape **or first degree rape** of a child under the age of
28 thirteen:

29 Guilty.

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

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12. Simple Rape **or Third Degree Rape**:

Guilty.

Guilty of attempted simple rape **or third degree rape**.

Guilty of sexual battery.

Not guilty.

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

Guilty.

Not guilty.

* * *

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

* * *

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

* * *

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

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

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

* * *

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

* * *

E.(1)

* * *

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

* * *

Art. 905.4. Aggravating circumstances

A. The following shall be considered aggravating circumstances:

(1) The offender was engaged in the perpetration or attempted perpetration

1 of aggravated rape **or first degree rape**, forcible rape **or second degree rape**,
2 aggravated kidnapping, second degree kidnapping, aggravated burglary, aggravated
3 arson, aggravated escape, assault by drive-by shooting, armed robbery, first degree
4 robbery, second degree robbery, simple robbery, cruelty to juveniles, second degree
5 cruelty to juveniles, or terrorism.

6 * * *

7 (3) The offender has been previously convicted of an unrelated murder,
8 aggravated rape **or first degree rape**, aggravated burglary, aggravated arson,
9 aggravated escape, armed robbery, or aggravated kidnapping.

10 * * *

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

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

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

21 Section 3. The introductory paragraph of Children's Code Article 305(A)(1) and
22 305(A)(1)(b) and (B)(1)(b) and (2)(f) and (g), 855(B)(7)(a) and (b), 857(A)(4) and (8),
23 858(B), 879(B)(2), 884.1(A)(1) and (2), 897(B)(1)(c), 897.1(A), and 901(E) are hereby
24 amended and reenacted to read as follows:

25 Art. 305. Divestiture of juvenile court jurisdiction; original criminal court
26 jurisdiction over children; when acquired

27 A.(1) When a child is fifteen years of age or older at the time of the
28 commission of first degree murder, second degree murder, aggravated rape **or first**
29 **degree rape**, or aggravated kidnapping, he is subject to the exclusive jurisdiction of

1 the juvenile court until either:

2 * * *

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

9 * * *

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

14 * * *

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

22 (2) * * *

23 * * *

24 (f) Forcible rape **or second degree rape**.

25 (g) Simple rape **or third degree rape**.

26 * * *

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

28 * * *

29 B. If the child is capable, the court shall then advise the child of the following

1 items in terms understandable to the child:

2 * * *

3 (7) The possible consequences of his admission that the allegations are true,
4 including the maximum and minimal dispositions which the court may impose
5 pursuant to Articles 897 through 900. In addition, if the child is fourteen years of age
6 or older and the petition charges the child with the perpetration, attempted
7 perpetration, or conspiracy to commit any of the following offenses, the court shall
8 inform the child that, if he admits to allegations of the petition, or the allegations of
9 the petition are found to be true, he may be required to register as a sex offender
10 pursuant to Chapter 3-B of Title 15 of the Louisiana Revised Statutes of 1950, and
11 the court shall inform the child regarding applicable required registrations and their
12 duration:

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

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

15 * * *

16 Art. 857. Transfers for criminal prosecution; authority

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

24 * * *

25 (4) Aggravated rape **or first degree rape**.

26 * * *

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

29 * * *

1 Art. 858. Motion for transfer; notice

2 * * *

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

10 * * *

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

12 * * *

13 B. * * *

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

21 * * *

22 Art. 884.1. Informing the child of sex offender registration and notification
23 requirements; form

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

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

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

29 * * *

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

2 * * *

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

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

6 * * *

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

17 * * *

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

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

27 * * *

28 Art. 901. Disposition guidelines; generally

29 * * *

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

6 * * *

7 Section 4. R.S. 13:2106(B) is hereby amended and reenacted to read as follows:

8 §2106. Particular courts; nonrefundable fee; assessment and disposition

9 * * *

10 B. In each criminal proceeding, involving family violence as defined in R.S.
 11 46:2121.1, simple rape **or third degree rape**, forcible rape **or second degree rape**,
 12 aggravated rape **or first degree rape**, aggravated assault, aggravated battery, simple
 13 battery, aggravated kidnapping, simple kidnapping, or false imprisonment, or any
 14 attempt to commit the aforementioned crimes, a nonrefundable fee of twenty-five
 15 dollars shall be collected by the clerk of the city court of Slidell and the clerk of the
 16 Twenty-Second Judicial District Court, St. Tammany Parish, which shall be in
 17 addition to all other fines, costs, or forfeitures lawfully imposed. If the defendant is
 18 found guilty and placed on probation, the court shall, as a condition of probation
 19 require the defendant to pay the additional fee at the time the defendant is placed on
 20 probation. If the sentence of the court is incarceration, the fee shall be collected at
 21 the time of imposition of sentence.

22 * * *

23 Section 5. R.S. 14:2(B)(9), (10), and (11), 30(A)(1), 30.1(A)(2), 32.6(A)(2), the
 24 introductory paragraph of 42(A) and 42(D)(1), 42.1, 43, the introductory paragraph of
 25 43.1(A) and 43.1(A), 43.6(A) and (B)(1), 50.2, and 107.2(A) are hereby amended and
 26 reenacted, and R.S. 14:43.1.1 is hereby enacted to read as follows:

27 §2. Definitions

28 * * *

29 B. In this Code, "crime of violence" means an offense that has, as an element,

1 the use, attempted use, or threatened use of physical force against the person or
2 property of another, and that, by its very nature, involves a substantial risk that
3 physical force against the person or property of another may be used in the course
4 of committing the offense or an offense that involves the possession or use of a
5 dangerous weapon. The following enumerated offenses and attempts to commit any
6 of them are included as "crimes of violence":

7 * * *

8 (9) Aggravated rape **or first degree rape**.

9 (10) Forcible rape **or second degree rape**.

10 (11) Simple rape **or third degree rape**.

11 * * *

12 §30. First degree murder

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

14 (1) When the offender has specific intent to kill or to inflict great bodily harm
15 and is engaged in the perpetration or attempted perpetration of aggravated
16 kidnapping, second degree kidnapping, aggravated escape, aggravated arson,
17 aggravated rape **or first degree rape**, forcible rape **or second degree rape**,
18 aggravated burglary, armed robbery, assault by drive-by shooting, first degree
19 robbery, second degree robbery, simple robbery, terrorism, cruelty to juveniles, or
20 second degree cruelty to juveniles.

21 * * *

22 §30.1. Second degree murder

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

24 (2) When the offender is engaged in the perpetration or attempted
25 perpetration of aggravated rape **or first degree rape**, forcible rape **or second degree**
26 **rape**, aggravated arson, aggravated burglary, aggravated kidnapping, second degree
27 kidnapping, aggravated escape, assault by drive-by shooting, armed robbery, first
28 degree robbery, second degree robbery, simple robbery, cruelty to juveniles, second
29 degree robbery, second degree robbery, simple robbery, cruelty to juveniles, second

1 degree cruelty to juveniles, or terrorism, even though he has no intent to kill or to
2 inflict great bodily harm.

3 * * *

4 §32.6. First degree feticide

5 A. First degree feticide is:

6 * * *

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

14 * * *

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

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

20 * * *

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

24 * * *

25 §42.1. ~~Foreible~~ **Second degree** rape

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

29 (1) When the victim is prevented from resisting the act by force or threats of

1 physical violence under circumstances where the victim reasonably believes that
2 such resistance would not prevent the rape.

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

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

11 §43. ~~Simple~~ Third degree rape

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

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

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

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

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

29 §43.1. Sexual battery

1 A. Sexual battery is the intentional touching of the anus or genitals of the
2 victim by the offender using any instrumentality or any part of the body of the
3 offender, **directly or through clothing**, or the touching of the anus or genitals of the
4 offender by the victim using any instrumentality or any part of the body of the
5 victim, **directly or through clothing**, when any of the following occur:

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

7 ~~(2) The act is consensual but the other person, who is not the spouse of the
8 offender, has not yet attained fifteen years of age and is at least three years younger
9 than the offender.~~

10 ~~(3) The offender is seventeen years of age or older and any of the following
11 exist:~~

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

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

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

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

21 * * *

22 **§43.1.1. Misdemeanor sexual battery**

23 **A. Misdemeanor sexual battery is the intentional touching of the breasts**
24 **or buttocks of the victim by the offender using any instrumentality or any part**
25 **of the body of the offender, directly or through clothing, or the intentional**
26 **touching of the breasts or buttocks of the offender by the victim using any**
27 **instrumentality or any part of the body of the victim, directly or through**
28 **clothing, when the offender acts without the consent of the victim.**

29 **B. Whoever commits the crime of misdemeanor sexual battery shall be**

1 fined not more than one thousand dollars, or imprisoned for not more than six
2 months, or both.

3 C. The offender shall not be eligible to have his conviction set aside and
4 his prosecution dismissed in accordance with Code of Criminal Procedure
5 Article 894.

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

9 * * *

10 §43.6. Administration of medroxyprogesterone acetate (MPA) to certain sex
11 offenders

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

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

28 * * *

29 §50.2. Perpetration or attempted perpetration of certain crimes of violence against

1 a victim sixty-five years of age or older

2 The court in its discretion may sentence, in addition to any other penalty
3 provided by law, any person who is convicted of a crime of violence or of an attempt
4 to commit any of the crimes as defined in R.S. 14:2(B) with the exception of first
5 degree murder (R.S. 14:30), second degree murder (R.S. 14:30.1), aggravated assault
6 (R.S. 14:37), aggravated rape **or first degree rape** (R.S. 14:42) and aggravated
7 kidnapping (R.S. 14:44), to an additional three years' imprisonment when the victim
8 of such crime is sixty-five years of age or older at the time the crime is committed.

9 * * *

10 §107.2. Hate crimes

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

27 * * *

28 Section 6. R.S. 15:302(C)(2), 469.1, 541(2)(a), (b), and (c) and (24)(a), 542(A)(2)
29 and (3)(a) and (b), 571.3(B)(3)(b), (c), and (d), 574.4(D)(1)(h), 708(C), 711(G)(1), 811(E),

1 831(D), 832(C)(2), 833(B)(3), 833.2(B), 893.1(1), and 1111(I)(1) are hereby amended and
2 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 * * *

7 C. The following persons shall not be imprisoned in any prison district:

8 * * *

9 (2) Persons convicted of treason, aggravated **or first degree rape**, ~~or~~ simple
10 rape **or third degree rape**, aggravated or simple arson, or aggravated or simple
11 kidnapping.

12 * * *

13 §469.1. Receipt of testimony from victims of certain crimes who are fifteen years
14 of age or younger; closed session of court or in chambers; procedure

15 In cases of simple rape **or third degree rape**, attempted simple rape **or third**
16 **degree rape**, aggravated rape **or first degree rape**, attempted aggravated rape **or**
17 **first degree rape**, forcible rape **or second degree rape**, attempted forcible rape **or**
18 **second degree rape**, or carnal knowledge of a juvenile in which the victim is a child
19 of fifteen years of age or younger, the court, upon its own motion or that of the
20 defendant or state, may order that the testimony of such victim be heard either in
21 closed session of court or in the judge's chambers, in the presence of the judge or
22 jury, the defendant, counsel for the defendant, the family of the defendant, the
23 parents or parent of the victim, the attorney for the state, a reasonable but limited
24 number of members of the public which the court may allow in its discretion under
25 these circumstances, and any other party which the court determines has a valid
26 interest in the proceedings.

27 * * *

28 §541. Definitions

29 For the purposes of this Chapter, the definitions of terms in this Section shall

1 apply:

2 * * *

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

5 (a) Aggravated rape **or first degree rape** (R.S. 14:42), which shall include
6 convictions for the perpetration or attempted perpetration of, or conspiracy to
7 commit, aggravated oral sexual battery (formerly R.S. 14:43.4, Repealed by Acts
8 2001, No. 301, §2) occurring prior to August 15, 2001.

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

10 (c) Simple rape **or third degree rape** under the provisions of R.S.
11 14:43(A)(1) and (2).

12 * * *

13 (24)(a) "Sex offense" means deferred adjudication, adjudication withheld,
14 or conviction for the perpetration or attempted perpetration of or conspiracy to
15 commit human trafficking when prosecuted under the provisions of R.S.
16 14:46.2(B)(2), R.S. 14:46.3 (trafficking of children for sexual purposes), R.S. 14:89
17 (crime against nature), R.S. 14:89.1 (aggravated crime against nature), R.S.
18 14:89.2(B)(3) (crime against nature by solicitation), R.S. 14:80 (felony carnal
19 knowledge of a juvenile), R.S. 14:81 (indecent behavior with juveniles), R.S.14:81.1
20 (pornography involving juveniles), R.S. 14:81.2 (molestation of a juvenile or a
21 person with a physical or mental disability), R.S. 14:81.3 (computer-aided
22 solicitation of a minor), R.S. 14:81.4 (prohibited sexual conduct between an educator
23 and student), R.S. 14:82.1 (prostitution; persons under eighteen), R.S. 14:82.2(C)(4)
24 and (5) (purchase of commercial sexual activity), R.S. 14:92(A)(7) (contributing to
25 the delinquency of juveniles), R.S. 14:93.5 (sexual battery of the infirm), R.S.
26 14:106(A)(5) (obscenity by solicitation of a person under the age of seventeen), R.S.
27 14:283 (video voyeurism), R.S. 14:41 (rape), R.S. 14:42 (aggravated rape **or first**
28 **degree rape**), R.S. 14:42.1 (forcible rape **or second degree rape**), R.S. 14:43
29 (simple rape **or third degree rape**), R.S. 14:43.1 (sexual battery), R.S. 14:43.2

1 (second degree sexual battery), R.S. 14:43.3 (oral sexual battery), R.S. 14:43.5
 2 (intentional exposure to AIDS virus), or a second or subsequent conviction of R.S.
 3 14:283.1 (voyeurism), committed on or after June 18, 1992, or committed prior to
 4 June 18, 1992, if the person, as a result of the offense, is under the custody of the
 5 Department of Public Safety and Corrections on or after June 18, 1992. A conviction
 6 for any offense provided in this definition includes a conviction for the offense under
 7 the laws of another state, or military, territorial, foreign, tribal, or federal law which
 8 is equivalent to an offense provided for in this Chapter, unless the tribal court or
 9 foreign conviction was not obtained with sufficient safeguards for fundamental
 10 fairness and due process for the accused as provided by the federal guidelines
 11 adopted pursuant to the Adam Walsh Child Protection and Safety Act of 2006.

12 * * *

13 §542. Registration of sex offenders and child predators

14 * * *

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

18 * * *

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

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

29 (a) Aggravated rape **or first degree rape** (R.S. 14:42), which shall include

1 those that have been adjudicated delinquent based upon the perpetration, attempted
2 perpetration, or conspiracy to commit aggravated oral sexual battery (formerly R.S.
3 14:43.4, Repealed by Acts 2001, No. 301, §2) occurring prior to August 15, 2001.

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

5 * * *

6 §571.3. Diminution of sentence for good behavior

7 * * *

8 B. * * *

9 * * *

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

13 * * *

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

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

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

17 * * *

18 §574.4. Parole; eligibility

19 * * *

20 D.(1) Notwithstanding any provision of law to the contrary, any person
21 serving a sentence of life imprisonment who was under the age of eighteen years at
22 the time of the commission of the offense, except for a person serving a life sentence
23 for a conviction of first degree murder (R.S. 14:30) or second degree murder (R.S.
24 14:30.1), shall be eligible for parole consideration pursuant to the provisions of this
25 Subsection if all of the following conditions have been met:

26 * * *

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

1 * * *

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

3 * * *

4 C. This Section shall not apply to criminals convicted of crimes of first or
5 second degree murder, attempted first or second degree murder, aggravated rape or
6 **first degree rape**, attempted aggravated rape or **first degree rape**, forcible rape or
7 **second degree rape**, aggravated kidnapping, aggravated arson, armed robbery, or
8 attempted armed robbery, or persons sentenced as habitual offenders under R.S.
9 15:529.1, except during the last six months of their terms.

10 * * *

11 §711. Work release program

12 * * *

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

23 * * *

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

26 * * *

27 E. Except in cases of serious illness or death of a member of the inmate's
28 family, or for an interview of the inmate by a prospective employer in which case the
29 inmate may be released only in security escort with Department of Public Safety and

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

* * *

29 (2) No inmate shall be assigned to maintenance work at public facilities

1 outside the department in accordance with this Section when such work requires
 2 housing the inmate in a parish prison or other local housing facility and the inmate
 3 has been convicted of first or second degree murder, attempted first or second degree
 4 murder, aggravated rape or first degree rape, attempted aggravated rape or first
 5 degree rape, forcible rape or second degree rape, aggravated kidnapping,
 6 aggravated arson, armed robbery, attempted armed robbery, or the inmate has been
 7 sentenced as an habitual offender under R.S. 15:529.1 except during the last six
 8 months of his term.

* * *

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

* * *

12 B.

* * *

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

* * *

1 §833.2. Temporary release of inmate for limited purposes

2 * * *

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

17 * * *

18 §893.1. Inmates who may not be assigned to J. Levy Dabadie Correctional Center

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

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

25 * * *

26 §1111. Work release program

27 * * *

28 I.(1) Any inmate who has been convicted of forcible rape **or second degree**
29 **rape** (R.S. 14:42.1), aggravated arson (R.S. 14:51), armed robbery (R.S. 14:64),

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

* * *

13 Section 7. R.S. 40:1300.13(E)(6) is hereby amended and reenacted to read as follows:

14 §1300.13. HIV-related testing; consent; exceptions

* * *

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

* * *

19 (6) On any person who has been arrested, indicted, or convicted for the
 20 crimes of aggravated rape **or first degree rape**, forcible rape **or second degree**
 21 **rape**, simple rape **or third degree rape**, or crime against nature as defined by R.S.
 22 14:89(A)(2) when required by a court to undergo an HIV-related test.

* * *

24 Section 8. R.S. 48:261(E)(2) is hereby amended and reenacted to read as follows:

25 §261. Maintenance work by department employees; exceptions

* * *

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

* * *

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 whoever commits the crime of misdemeanor sexual battery is to be fined not more than \$1,000, or imprisoned for not more than six months, or both.

Proposed law provides that an offender convicted of misdemeanor sexual battery cannot have his conviction set aside and his prosecution dismissed in accordance with certain provisions of present law.

Proposed law 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.

Present law references the present law crimes of aggravated rape, forcible rape, and simple rape in various provisions of the Code of Criminal Procedure, the Code of Evidence, the Children's Code, and the La. Revised Statutes.

Proposed law changes these present law references from "aggravated rape", "forcible rape", and "simple rape" to "aggravated rape or first degree rape", "forcible rape or second degree rape", and "simple rape or third degree rape", respectively.

Proposed law otherwise retains present law.

Effective August 1, 2015.

(Amends C.Cr.P. Art. 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, Ch.C. Art. 305(A)(1)(intro para) and (A)(1)(b) and (B)(1)(b) and (2)(f) and (g), 855(B)(7)(a) and (b), 857(A)(4) and (8), 858(B), 879(B)(2), 884.1(A)(1) and (2), 897(B)(1)(c), 897.1(A), and 901(E), R.S. 13:2106(B), 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 42(D)(1), 42.1, 43, 43.1(A)(intro para) and 43.1(A), 43.6(A) and (B)(1), 50.2, and 107.2(A), R.S. 15:302(C)(2), 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(E), 831(D), 832(C)(2), 833(B)(3), 833.2(B), 893.1(1), and 1111(D)(1), R.S. 40:1300.13(E)(6), and R.S. 48:261(E)(2); adds R.S. 14:43.1.1)