

Sex Crimes: Definitions and Penalties Louisiana

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First Degree Rape

Question	Answer
How is it defined?	<p>First degree rape is a rape committed upon a person 65 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:</p> <ul style="list-style-type: none"> • When the victim resists the act to the utmost, but the resistance is overcome by force; • When the victim is prevented from resisting the act by threats of great and immediate bodily harm, accompanied by apparent power of execution; • When the victim is prevented from resisting the act because the offender is armed with a dangerous weapon; • When the victim is under 13. Lack of knowledge of the victim's age is not a defense; • When two or more offenders participate in the act; or • When the victim is prevented from resisting the act because the victim is a person with a disability.
What are the punishments for this crime?	<ul style="list-style-type: none"> • Life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. • If the victim was under 13: <ul style="list-style-type: none"> • And if the district attorney seeks a capital verdict, the offender shall be punished by death or life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence, in accordance with the determination of the jury; or • And if the district attorney does not seek a capital verdict, the offender shall be punished by life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. • Note: This provision was held unconstitutional in February 2020 (<i>State v. Samuel</i>, 2019-408 (La. App. 3 Cir. 2/5/20), 291 So. 3d 256, 258, <u>writ denied</u>, 2020-00398 (La. 7/24/20), 299 So. 3d 77).
Anything else I should know?	<p>The following definitions are relevant to this definition:</p> <ul style="list-style-type: none"> • “Rape” is defined as the act of anal, oral, or vaginal sexual intercourse with a male or female person committed without the person's lawful consent. Emission is not necessary, and any sexual penetration, when the rape involves vaginal or anal intercourse, whether the penetration is accomplished using the genitals of the offender or victim or using any instrumentality and however slight, is sufficient to complete the crime. • “Participate” means committing rape or physically assisting another who commits rape. • “Person with a disability” means a person with a mental, physical, or developmental disability that substantially impairs the person's ability to provide adequately for his or her own care or protection.

Statutory citation(s):	<ul style="list-style-type: none"> • LA. REV. STAT. ANN. § 14.41 • LA. REV. STAT. ANN. § 14:42
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Second Degree Rape

Question	Answer
How is it defined?	<p>Anal, oral, or vaginal sexual intercourse without the lawful consent of the victim because:</p> <ul style="list-style-type: none"> • 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; and/or • The victim is incapable of resisting or of understanding the nature of the act by reason of intoxication 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
What are the punishments for this crime?	<ul style="list-style-type: none"> • Imprisonment at hard labor, without benefit of probation, parole, or suspension of sentence, for not less than five nor more than 40 years.
Anything else I should know?	<ul style="list-style-type: none"> • N/A
Statutory citation(s):	<ul style="list-style-type: none"> • LA. REV. STAT. ANN. § 14:42.1

Third Degree Rape

Question	Answer
How is it defined?	<p>Anal, oral, or vaginal sexual intercourse without the lawful consent of a victim because it is committed under any one or more of the following circumstances:</p> <ul style="list-style-type: none"> • The victim is incapable of resisting or of understanding the nature of the act by reason of a stupor or abnormal condition of mind produced by an intoxicating agent or any cause and the offender knew or should have known of the victim's incapacity; • The victim, through unsoundness of mind, is temporarily or permanently incapable of

	<p>understanding the nature of the act and the offender knew or should have known of the victim's incapacity; or</p> <ul style="list-style-type: none"> • The victim submits under the belief that the person committing the act is someone known to the victim, other than the offender, and such belief is intentionally induced by any artifice, pretense, or concealment practiced by the offender.
What are the punishments for this crime?	<ul style="list-style-type: none"> • Imprisoned, with or without hard labor, without benefit of parole, probation, or suspension of sentence, for not more than 25 years.
Anything else I should know?	<ul style="list-style-type: none"> • N/A
Statutory citation(s):	<ul style="list-style-type: none"> • LA. REV. STAT. ANN. § 14:43

Sexual Battery

Question	Answer
How is it defined?	<p>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, directly or through clothing, when any of the following occur:</p> <ul style="list-style-type: none"> • The offender acts without the consent of the victim; • The victim has not yet turned 15 and is at least three years younger than the offender; • The offender is 17 or older and any of the following exist: <ul style="list-style-type: none"> • The act is without consent of the victim, and the victim is prevented from resisting the act because either of the following conditions exist: <ul style="list-style-type: none"> • The victim has paraplegia, quadriplegia, or is otherwise physically incapable of preventing the act due to a physical disability; or • 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; or • The act is without consent of the victim, and the victim is 65 years of age or older. <p>Lack of knowledge of the victim's age shall not be a defense. However, normal medical treatment or normal sanitary care shall not be construed as an offense under the provisions of this Section.</p>

What are the punishments for this crime?	<ul style="list-style-type: none"> • Punished by imprisonment, with or without hard labor, without benefit of parole, probation, or suspension of sentence, for not more than 10 years. • If the victim is under the age of 13 when the offender is 17 or older, punishment shall be by imprisonment at hard labor for not less than 25 years nor more than 99 years. At least 25 years of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence. • If the offender is 17 or older and commits the offense under any of the circumstances described in the third bullet of the preceding section, punishment shall be imprisoned at hard labor for not less than 25 years nor more than 99 years. At least 25 years of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence. • Upon completion of the term of imprisonment imposed under either of the two preceding paragraphs, the offender shall be monitored by the Department of Public Safety and Corrections through the use of electronic monitoring equipment for the remainder of his natural life. • Unless it is determined by the Department of Public Safety and Corrections, pursuant to rules adopted in accordance with the provisions of this Subsection, that a sexual offender is unable to pay all or any portion of such costs, each sexual offender to be electronically monitored shall pay the cost of being monitored.
Anything else I should know?	<ul style="list-style-type: none"> • N/A
Statutory citation(s):	<ul style="list-style-type: none"> • LA. REV. STAT. ANN. § 14:43.1

Misdemeanor Sexual Battery

Question	Answer
How is it defined?	<ul style="list-style-type: none"> • 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.
What are the punishments for this crime?	<ul style="list-style-type: none"> • Fine of not more than \$1,000, or imprisoned for not more than six months, or both.
Anything else I should know?	<ul style="list-style-type: none"> • The offender shall not be subject to any provisions of law that are applicable to sex offenders, including but not limited to any provision that requires the registration of the offender and notice to the public.

Statutory citation(s):

- LA. REV. STAT. ANN. § 14:43.1.1

Second Degree Sexual Battery

Question	Answer
How is it defined?	<p>Intentionally engaging in any of the following acts with another person when the offender intentionally inflicts serious bodily injury on the victim:</p> <ul style="list-style-type: none">• The touching of the anus or genitals of the victim by the offender using any instrumentality or any part of the body of the offender, directly or through clothing; 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, directly or through clothing.
What are the punishments for this crime?	<ul style="list-style-type: none">• Imprisonment, with or without hard labor, without benefit of parole, probation, or suspension of sentence, for not more than 15 years.• Second degree sexual battery on a victim under 13 when the offender is 17 years of age or older shall be punished by imprisonment at hard labor for not less than 25 years nor more than 99 years. At least 25 years of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence.• A 17 year old or older who commits the crime of second degree sexual battery shall be punished by imprisonment at hard labor for not less than 25 nor more than 99 years, at least 25 years of the sentence imposed being served without benefit of parole, probation, or suspension of sentence, when any of the following conditions exist:<ul style="list-style-type: none">• The victim has paraplegia, quadriplegia, or is otherwise physically incapable of preventing the act due to a physical disability;• 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; or• The victim is 65 years of age or older.• After imprisonment for an offense described in either of the two preceding paragraphs, the offender shall be monitored by the Department of Public Safety and Corrections through the use of electronic monitoring equipment for the remainder of his natural life.• Unless it is determined by the Department of Public Safety and Corrections that a sexual offender is unable to pay all or any portion of such costs, each sexual offender to be electronically monitored shall pay the cost of such monitoring.

Anything else I should know?	<p>The following definitions are relevant to this crime:</p> <ul style="list-style-type: none"> • “Serious bodily injury” means bodily injury which involves unconsciousness; extreme physical pain; protracted and obvious disfigurement; protracted loss or impairment of the function of a bodily member, organ, or mental faculty; or a substantial risk of death.
Statutory citation(s):	<ul style="list-style-type: none"> • REV. STAT. ANN. § 14:43.2 • LA. REV. STAT. ANN. § 14.2

Oral Sexual Battery

Question	Answer
How is it defined?	<p>Intentional touching of the anus or genitals of the victim by the offender using the mouth or tongue of the offender, or the touching of the anus or genitals of the offender by the victim using the mouth or tongue of the victim, when any of the following occur:</p> <ul style="list-style-type: none"> • The victim is under 15 and is at least three years younger than the offender; • The offender is 17 or older and any of the following exist: <ul style="list-style-type: none"> • The act is without the consent of the victim, and the victim is prevented from resisting the act because either of the following conditions exist: <ul style="list-style-type: none"> • The victim has paraplegia, quadriplegia, or is otherwise physically incapable of preventing the act due to a physical disability. <p>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; or the act is without the consent of the victim, and the victim is 65 years of age or older.</p> <p>Lack of knowledge of the victim’s age shall not be a defense.</p>
What are the punishments for this crime?	<ul style="list-style-type: none"> • Imprisonment, with or without hard labor, without benefit of parole, probation, or suspension of sentence, for not more than 10 years. • Oral sexual battery on a victim under 13 when the offender is 17 or older shall be punished by imprisonment at hard labor for not less than 25 years nor more than 99 years. At least 25 years of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence. • Oral sexual battery on a victim when the victim is prevented from resisting because of the circumstances described above or when the victim is 65 or older and does not consent shall be imprisoned at hard labor for not less than 25 years nor more than 99 years. At least 25 years of the sentence imposed shall be served without parole, probation, or suspension of sentence. • After imprisonment for the offense described in either of the two preceding paragraphs, the offender

	<p>shall be monitored by the Department of Public Safety and Corrections through the use of electronic monitoring equipment for the remainder of his natural life.</p> <ul style="list-style-type: none"> • Unless it is determined by the Department of Public Safety and Corrections that a sexual offender is unable to pay all or any portion of such costs, each sexual offender to be electronically monitored shall pay the cost of such monitoring.
Anything else I should know?	<ul style="list-style-type: none"> • N/A
Statutory citation(s):	<ul style="list-style-type: none"> • LA. REV. STAT. ANN. § 14:43.3

Statutory Rape

Question	Answer
How is it defined?	<p>Statutory rape is not specifically penalized in Louisiana. But several statutes criminalize specific sex acts with minors:</p> <ul style="list-style-type: none"> • Aggravated rape punishes sexual intercourse with someone under 13; • Sexual battery when, though the sex act is consensual, the victim is younger than 15 and at least three years younger than the offender; and • Oral sexual battery when the victim is younger than 15 and at least three years younger than the offender.
What are the punishments for this crime?	<ul style="list-style-type: none"> • Aggravated rape of a 13 year old or younger can be punished by death or by life imprisonment at hard labor without the benefit of parole. • Sexual battery is punishable by imprisonment with or without hard labor for up to 10 years without the violation of parole. • Sexual battery on a victim under 13 when the offender is 17 or older shall be punished by imprisonment at hard labor for not less than 25 years nor more than 99 years. At least 25 years of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence.
Anything else I should know?	<ul style="list-style-type: none"> • N/A
Statutory citation(s):	<ul style="list-style-type: none"> • LA. REV. STAT. ANN. § 14:42 et sequential

Sodomy

Question	Answer
How is it defined?	<ul style="list-style-type: none">• Louisiana seemingly does not criminalize sodomy.• Any state laws that outright prohibit sodomy are unconstitutional under <i>Lawrence v. Texas</i>, 539 U.S. 588 (2003).
What are the punishments for this crime?	<ul style="list-style-type: none">• N/A
Anything else I should know?	<ul style="list-style-type: none">• N/A
Statutory citation(s):	<ul style="list-style-type: none">• N/A