



Statute 14:38.5

Interpretation & Prosecution

From a District Attorney's Perspective

DENNIS ELFERT
CHIEF OF STAFF

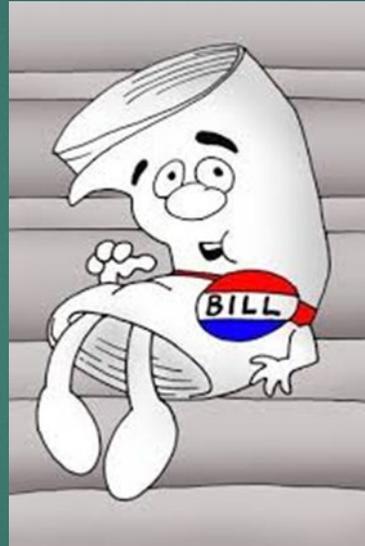
TERREBONNE PARISH DISTRICT ATTORNEY'S OFFICE

Key Louisiana Statutes

§14:38.5 – Assault on emergency room personnel, emergency services personnel, or a healthcare professional

§14:34.8 – Battery of emergency room personnel, emergency services personnel, or a healthcare professional

I'm A Great Idea!



Legal Definitions

§14:33 Battery

Intentional use of force or violence upon another person

§14:36 Assault

Attempt to commit battery OR placing someone in reasonable fear of receiving a battery

Types of Assault & Battery

Simple Battery – up to \$1,000 fine or 6 months jail

Second Degree Battery – serious bodily injury, up to 8 years

Aggravated Battery – dangerous weapon, up to 10 years

Aggravated Second Degree Battery – weapon + serious injury, up to 15 years

Simple Assault – up to \$200 fine or 90 days jail

Aggravated Assault – up to \$1000 fine or 6 months jail

Aggravated Assault with Firearm – up to 10 years imprisonment

Protected Victim Classes

Correctional Officers

Police Officers

School Teachers

Bus Operators

Athletic Officials

Domestic Violence Victims

14:34.8

Battery of Healthcare Professional

First Offense

Fine up to \$1,000

Jail 15 days – 6 months

Minimum 48 hours mandatory jail

Second Offense

Prison 1–3 years

Minimum 45 days without parole or probation

Injury requiring medical attention

Fine up to \$5,000

Prison 1–5 years

14:38.5

Assault of Healthcare Professional

Fine up to \$1,000

Jail 30 to 180 days

§14:34.8. Battery of emergency room personnel, emergency services personnel, or a healthcare professional

A.(1) Battery of emergency room personnel, emergency services personnel, or a healthcare professional is battery committed without the consent of the victim when the offender has reasonable grounds to believe that the victim is emergency room personnel, emergency services personnel, or a healthcare professional acting in the performance of his duties.

(2) The use of force of violence upon the person of emergency room personnel, emergency services personnel, or a healthcare professional by throwing feces, urine, blood, saliva, or any form of human waste by an offender while the offender is transported to or from a medical facility or while being evaluated or treated in a medical facility shall also constitute battery of emergency room personnel, emergency services personnel, or a healthcare professional.

§14:38.5. Assault on emergency room personnel, emergency services personnel, or a healthcare professional

Assault on emergency room personnel, emergency services personnel, or a healthcare professional is an assault committed when the offender has reasonable grounds to believe the victim is an emergency room personnel, emergency services personnel, or a healthcare professional acting in the performance of his duties.

Elements the State Must Prove

Victim is a Healthcare Professional, Emergency Room or EMS Personnel

Defendant has a reasonable belief that the victim is part of the special protected class

At the time of the incident the Victim was performing official duties

Healthcare Professional

a person licensed or certified by this state to provide healthcare or professional services as a physician, physician assistant, dentist, registered or licensed practical nurse or certified nurse assistant, advanced practice registered nurse, certified emergency medical technician, paramedic, certified registered nurse anesthetist, nurse practitioner, respiratory therapist, clinical nurse specialist, pharmacist, optometrist, podiatrist, chiropractor, physical therapist, occupational therapist, licensed radiologic technologist, licensed clinical laboratory scientist, licensed professional counselor, certified social worker, psychologist, patient transporter, dietary worker, patient access representative, security personnel, patient relations advocate, veterinarian, veterinary staff, or any other person who otherwise assists in or supports the performance of healthcare services.

Emergency Room Personnel

a person in a hospital emergency department who, in the course and scope of his employment or as a volunteer, provides services or medical care, or who assists in the providing of services or medical care, for the benefit of the general public during emergency situations. "Emergency room personnel" shall include but not be limited to **any healthcare professional, emergency department clerk, emergency department technician, student, and emergency department volunteer working in the hospital emergency department.**

Emergency Services Personnel

any "emergency medical services personnel" as defined by R.S. 40:1075.3
or any "EMS practitioners" as defined by R.S. 40:1131.

Identification as Healthcare Professional

- Uniform
- Badge or ID
- Self-identification
- Location of incident
- Prior interaction/familiarity

Acting in Performance of Duties

- Direct patient healthcare
- During course and scope of employment
- Reasonable expectation of employer
- Protection is not limited to patients only

Case Examples

- State v Williams, 329 So.3d 885, 2021 La. App. LEXIS 1547 **; 20-609 (La.App. 3 Cir. 10/20/21); 2021 WL 4891069
- State v Clark, 32nd JDC, Parish of Terrebonne, Docket #694836
- State v Pitre, 32nd JDC, Parish of Terrebonne, Docket #800529

Contact Information

Dennis J. Elfert

Chief of Staff

Terrebonne Parish District Attorney's Office

985-873-6500

denniselfert@tpda.org