

Regular Session, 2010

SENATE BILL NO. 56

BY SENATORS MARTINY, ALARIO, AMEDEE, APPEL, BROOME, CROWE, DONAHUE, DUPLESSIS, HEITMEIER, KOSTELKA, LONG, MICHOT, MOUNT, SHAW AND THOMPSON AND REPRESENTATIVES ANDERS, ARNOLD, BOBBY BADON, BALDONE, BARRAS, BILLIOT, BROSSETT, BURFORD, HENRY BURNS, TIM BURNS, CARTER, CHAMPAGNE, CHANEY, CONNICK, CROMER, DOERGE, DOVE, HARDY, HENDERSON, HENRY, HINES, HOFFMANN, HUTTER, JOHNSON, LABRUZZO, LAMBERT, LEGER, LIGI, LORUSSO, MILLS, MONICA, NOWLIN, PEARSON, PUGH, RICHARD, ROBIDEAUX, SCHRODER, SIMON, SMILEY, JANE SMITH, ST. GERMAIN, TALBOT, TEMPLET, THIBAUT, THIERRY, WHITE, WILLIAMS AND WILLMOTT

SEX OFFENSES. Provides for forfeiture of personal property used in the commission of certain criminal offenses. (8/15/10)

1 AN ACT

2 To amend and reenact R.S. 14:80(D), 81.1(E)(3), (4), (5) and (6), and 86 and to enact R.S.  
3 14:40.3(C)(4), 46.2(B)(4), 46.3(D)(3), 81(H)(3), 81.1(E)(7), 81.2(G), and 81.3(B)(4)  
4 and R.S. 15:539.1, relative to criminal offenses; to provide for forfeiture of certain  
5 property used in the commission of certain crimes; to provide for forfeiture  
6 procedure; to provide for exempt property; to provide for allocation of proceeds; and  
7 to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 14:80(D), 81.1(E)(3), (4), (5) and (6), and 86 are hereby amended  
10 and reenacted and R.S. 14:40.3(C)(4), 46.2(B)(4), 46.3(D)(3), 81(H)(3), 81.1(E)(7), 81.2(G),  
11 and 81.3(B)(4) are hereby enacted to read as follows:

12 §40.3. Cyberstalking

13 \* \* \*

14 C. \* \* \*

15 **(4)(a) In addition, the court shall order that the personal property used**  
16 **in the commission of the offense shall be seized and impounded, and after**  
17 **conviction, sold at public sale or public auction by the district attorney in**

1 accordance with R.S. 15:539.1.

2 (b) The personal property made subject to seizure and sale pursuant to  
3 Subparagraph (a) of this Paragraph may include, but shall not be limited to,  
4 electronic communication devices, computers, computer related equipment,  
5 motor vehicles, photographic equipment used to record or create still or moving  
6 visual images of the victim that are recorded on paper, film, video tape, disc, or  
7 any other type of digital recording media.

8 \* \* \*

9 §46.2. Human trafficking

10 \* \* \*

11 B. \* \* \*

12 (4)(a) In addition, the court shall order that the personal property used  
13 in the commission of the offense shall be seized and impounded, and after  
14 conviction, sold at public sale or public auction by the district attorney in  
15 accordance with R.S. 15:539.1.

16 (b) The personal property made subject to seizure and sale pursuant to  
17 Subparagraph (a) of this Paragraph may include, but shall not be limited to,  
18 electronic communication devices, computers, computer related equipment,  
19 motor vehicles, photographic equipment used to record or create still or moving  
20 visual images of the victim that are recorded on paper, film, video tape, disc, or  
21 any other type of digital recording media.

22 \* \* \*

23 §46.3. Trafficking of children for sexual purposes

24 \* \* \*

25 D. \* \* \*

26 (3)(a) In addition, the court shall order that the personal property used  
27 in the commission of the offense shall be seized and impounded, and after  
28 conviction, sold at public sale or public auction by the district attorney in  
29 accordance with R.S. 15:539.1.

1                   **(b) The personal property made subject to seizure and sale pursuant to**  
 2                   **Subparagraph (a) of this Paragraph may include, but shall not be limited to,**  
 3                   **electronic communication devices, computers, computer related equipment,**  
 4                   **motor vehicles, photographic equipment used to record or create still or moving**  
 5                   **visual images of the victim that are recorded on paper, film, video tape, disc, or**  
 6                   **any other type of digital recording media.**

7   \*           \*           \*

8                   §80. Felony carnal knowledge of a juvenile

9   \*           \*           \*

10                   D.**(1)** Whoever commits the crime of felony carnal knowledge of a juvenile  
 11 shall be fined not more than five thousand dollars, or imprisoned, with or without  
 12 hard labor, for not more than ten years, or both, provided that the defendant shall not  
 13 be eligible to have his conviction set aside or his prosecution dismissed in  
 14 accordance with the provisions of Code of Criminal Procedure Article 893.

15                   **(2)(a) In addition, the court shall order that the personal property used**  
 16 **in the commission of the offense shall be seized and impounded, and after**  
 17 **conviction, sold at public sale or public auction by the district attorney in**  
 18 **accordance with R.S. 15:539.1.**

19                   **(b) The personal property made subject to seizure and sale pursuant to**  
 20 **Subparagraph (a) of this Paragraph may include, but shall not be limited to,**  
 21 **electronic communication devices, computers, computer related equipment,**  
 22 **motor vehicles, photographic equipment used to record or create still or moving**  
 23 **visual images of the victim that are recorded on paper, film, video tape, disc, or**  
 24 **any other type of digital recording media.**

25   \*           \*           \*

26                   §81. Indecent behavior with juveniles

27   \*           \*           \*

28                   H.

   \*           \*           \*

29                   **(3)(a) In addition, the court shall order that the personal property used**

1 in the commission of the offense shall be seized and impounded, and after  
2 conviction, sold at public sale or public auction by the district attorney in  
3 accordance with R.S. 15:539.1.

4 (b) The personal property made subject to seizure and sale pursuant to  
5 Subparagraph (a) of this Paragraph may include, but shall not be limited to,  
6 electronic communication devices, computers, computer related equipment,  
7 motor vehicles, photographic equipment used to record or create still or moving  
8 visual images of the victim that are recorded on paper, film, video tape, disc, or  
9 any other type of digital recording media.

10 §81.1. Pornography involving juveniles

11 \* \* \*

12 E. \* \* \*

13 (3)(a) In addition, the court shall order that the personal property used  
14 in the commission of the offense shall be seized and impounded, and after  
15 conviction, sold at public sale or public auction by the district attorney in  
16 accordance with R.S. 15:539.1.

17 (b) The personal property made subject to seizure and sale pursuant to  
18 Subparagraph (a) of this Paragraph may include, but shall not be limited to,  
19 electronic communication devices, computers, computer related equipment,  
20 motor vehicles, photographic equipment used to record or create still or moving  
21 visual images of the victim that are recorded on paper, film, video tape, disc, or  
22 any other type of digital recording media.

23 ~~(3)~~ (4) Upon completion of the term of imprisonment imposed in accordance  
24 with Paragraph (2) of this Subsection, the offender shall be monitored by the  
25 Department of Public Safety and Corrections through the use of electronic  
26 monitoring equipment for the remainder of his natural life.

27 ~~(4)~~ (5) Unless it is determined by the Department of Public Safety and  
28 Corrections, pursuant to rules adopted in accordance with the provisions of this  
29 Subsection, that a sexual offender is unable to pay all or any portion of such costs,

1 each sexual offender to be electronically monitored shall pay the cost of such  
2 monitoring.

3 ~~(5)~~ (6) The costs attributable to the electronic monitoring of an offender who  
4 has been determined unable to pay shall be borne by the department if, and only to  
5 the degree that, sufficient funds are made available for such purpose whether by  
6 appropriation of state funds or from any other source.

7 ~~(6)~~ (7) The Department of Public Safety and Corrections shall develop, adopt,  
8 and promulgate rules in the manner provided in the Administrative Procedure Act,  
9 that provide for the payment of such costs. Such rules shall contain specific  
10 guidelines which shall be used to determine the ability of the offender to pay the  
11 required costs and shall establish the reasonable costs to be charged. Such rules may  
12 provide for a sliding scale of payment so that an offender who is able to pay a  
13 portion, but not all, of such costs may be required to pay such portion.

14 \* \* \*

15 §81.2. Molestation of a juvenile

16 \* \* \*

17 **G. (1) In addition, the court shall order that the personal property used**  
18 **in the commission of the offense shall be seized and impounded, and after**  
19 **conviction, sold at public sale or public auction by the district attorney in**  
20 **accordance with R.S. 15:539.1.**

21 **(2) The personal property made subject to seizure and sale pursuant to**  
22 **Paragraph (1) of this Subsection may include, but shall not be limited to,**  
23 **electronic communication devices, computers, computer related equipment,**  
24 **motor vehicles, photographic equipment used to record or create still or moving**  
25 **visual images of the victim that are recorded on paper, film, video tape, disc, or**  
26 **any other type of digital recording media.**

27 §81.3. Computer-aided solicitation of a minor

28 \* \* \*

29 B. \* \* \*

1           **(4)(a) In addition, the court shall order that the personal property used**  
2           **in the commission of the offense shall be seized and impounded, and after**  
3           **conviction, sold at public sale or public auction by the district attorney in**  
4           **accordance with R.S. 15:539.1.**

5           **(b) The personal property made subject to seizure and sale pursuant to**  
6           **Subparagraph (a) of this Paragraph may include, but shall not be limited to,**  
7           **electronic communication devices, computers, computer related equipment,**  
8           **motor vehicles, photographic equipment used to record or create still or moving**  
9           **visual images of the victim that are recorded on paper, film, video tape, disc, or**  
10           **any other type of digital recording media.**

11   \*       \*       \*

12           §86. Enticing persons into prostitution

13           **A.** Enticing persons into prostitution is committed when any person over the  
14           age of seventeen entices, places, persuades, encourages, or causes the entrance of any  
15           other person under the age of twenty-one into the practice of prostitution, either by  
16           force, threats, promises, or by any other device or scheme. Lack of knowledge of the  
17           other person's age shall not be a defense.

18           **B.(1)** Whoever commits the crime of enticing persons into prostitution shall  
19           be imprisoned, with or without hard labor, for not less than two years nor more than  
20           ten years.

21           **(2) In addition, the court shall order that the personal property used in**  
22           **the commission of the offense shall be seized and impounded, and after**  
23           **conviction, sold at public sale or public auction by the district attorney in**  
24           **accordance with R.S. 15:539.1.**

25           **(3) The personal property made subject to seizure and sale pursuant to**  
26           **Paragraph (2) of this Subsection may include, but shall not be limited to,**  
27           **electronic communication devices, computers, computer related equipment,**  
28           **motor vehicles, photographic equipment used to record or create still or moving**  
29           **visual images of the victim that are recorded on paper, film, video tape, disc, or**

1        any other type of digital recording media.

2        Section 2. R.S. 15:539.1 is enacted to read as follows:

3        §539.1. Forfeited property related to certain sex crimes; exempt property;

4                                allocation of forfeited property

5                                A. When personal property is forfeited under the provisions of R.S.

6                                14:40.3 (Cyberstalking), R.S. 14:46.2 (Human trafficking), R.S. 14:46.3

7                                (Trafficking of children for sexual purposes), R.S. 14:80 (Felony carnal

8                                knowledge of a juvenile), R.S. 14:81 (Indecent behavior with juveniles), R.S.

9                                14:81.1 (Pornography involving juveniles), R.S. 14:81.2 (Molestation of a

10                                juvenile), R.S. 14:81.3 (Computer-aided solicitation of a minor), and R.S. 14:86

11                                (Enticing persons into prostitution), the district attorney shall authorize a

12                                public sale or a public auction conducted by a licensed auctioneer, without

13                                appraisal, of that which is not required by law to be destroyed and which is not

14                                harmful to the public.

15                                B.(1) The personal property shall be exempt from sale if it was stolen or

16                                if the possessor of the property was not the owner and the owner did not know

17                                that the personal property was being used in the commission of the crime. If

18                                this exemption is applicable, the personal property shall not be released until

19                                such time as all applicable fees related to its seizure and storage are paid.

20                                (2) Property subject to forfeiture pursuant to the provisions of this

21                                Section shall be exempt from forfeiture when a spouse, co-owner, or interest

22                                holder in the property establishes by sworn affidavit executed before a notary

23                                public the following:

24                                (a) That he had no knowledge of the commission of the criminal conduct

25                                and could not have reasonably known of the conduct.

26                                (b) That he did not consent to the use of property in the commission of

27                                the criminal conduct.

28                                (c) That he owns an interest in the property otherwise subject to

29                                forfeiture.

1                   **(3) Intentionally falsifying information required by the provisions of**  
 2                   **Paragraph (2) of this Subsection shall subject the affiant to prosecution under**  
 3                   **the provisions of R.S. 14:125.**

4                   **C. In addition, the personal property shall be exempt from sale if it is**  
 5                   **subject to a lien recorded prior to the date of the offense and if the applicable**  
 6                   **fees related to the property's seizure and storage are paid by a valid lien holder.**

7                   **D. The proceeds of the public sale or public auction shall pay the costs**  
 8                   **of the public sale or public auction, court costs, and fees related to the seizure**  
 9                   **and storage of the personal property. Any proceeds remaining shall be**  
 10                   **distributed by the district attorney in the following manner:**

11                   **(1) Sixty percent to the seizing agency or agencies in an equitable**  
 12                   **manner.**

13                   **(2) Twenty percent to the prosecuting agency.**

14                   **(3) Twenty percent to the criminal court fund of the parish in which the**  
 15                   **offender was prosecuted.**

The original instrument was prepared by Michelle Ducharme. The following digest, which does not constitute a part of the legislative instrument, was prepared by Jeanne Johnston.

#### DIGEST

Martiny (SB 56)

Present law criminalizes and penalizes cyberstalking, human trafficking, trafficking of children for sexual purposes, felony carnal knowledge of a juvenile, indecent behavior with juveniles, pornography involving juveniles, molestation of a juvenile, computer-aided solicitation of a minor, and enticing persons into prostitution.

Proposed law retains present law and provides for the seizure and impoundment of the personal property used in the commission of any of the following crimes: cyberstalking, human trafficking, trafficking of children for sexual purposes, felony carnal knowledge of a juvenile, indecent behavior with juveniles, pornography involving juveniles, molestation of a juvenile, computer-aided solicitation of a minor, and enticing persons into prostitution. Proposed law further provides that after conviction of these certain sex crimes, the property shall be sold at public sale or public auction by the district attorney.

Proposed law exempts personal property from sale as follows:

1. If the property was stolen or if the owner did not know his property was being used in the commission of the crime.
2. If the property is subject to a lien recorded prior to the date of the offense and the applicable fees related to the property's seizure and storage are paid by a valid lien



holder.

Proposed law provides that property subject to forfeiture pursuant to proposed law shall be exempt from forfeiture when a spouse, co-owner, or interest holder in the property establishes by sworn affidavit that:

1. That he had no knowledge of the commission of the criminal conduct and could not have reasonably known of the conduct.
2. That he did not consent to the use of property in the commission of the criminal conduct.
3. That he owns an interest in the property otherwise subject to forfeiture.

Proposed law further provides that intentionally falsifying information required to render property exempt from forfeiture shall subject the affiant to prosecution pursuant to existing law that imposes penalties for false swearing.

Proposed law provides that the proceeds of the public sale or public auction shall pay the costs of the sale or auction, court costs, and fees related to the seizure and storage of the personal property and any proceeds remaining shall be distributed in the following manner:

1. 60% to the seizing agency or agencies in an equitable manner.
2. 20% to the prosecuting agency.
3. 20% to the criminal court fund of the parish in which the offender was prosecuted.

Effective August 15, 2010.

(Amends R.S. 14:80(D), 81.1(E)(3), (4), (5) and (6), and 86; adds R.S. 14:40.3(C)(4), 46.2(B)(4), 46.3(D)(3), 81(H)(3), 81.1(E)(7), 81.2(G), and 81.3(B)(4) and R.S. 15:539.1)

#### Summary of Amendments Adopted by Senate

##### Senate Floor Amendments to engrossed bill.

1. Provides for exemption of property from forfeiture through execution of a sworn affidavit containing specified information.
2. Provides for a penalty for falsifying information in order to render property exempt from forfeiture.