

Regular Session, 2009

HOUSE BILL NO. 755

BY REPRESENTATIVES EDWARDS, BURFORD, TIM BURNS, CHANDLER, HINES,
JOHNSON, RICHARDSON, AND WILLMOTT

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CHILDREN: Provides relative to victims of child pornography

1 AN ACT

2 To amend and reenact R.S. 14:81.1(F) and to enact Civil Code Article 2315.3, relative to
3 victims of child pornography; to provide for exemplary damages for children who
4 are victims of child pornography; to provide for the sharing of information between
5 law enforcement, the attorney general, and the National Center for Missing and
6 Exploited Children; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Civil Code Article 2315.3 is hereby enacted to read as follows:

9 Art. 2315.3. Additional damages; child pornography

10 In addition to general and special damages, exemplary damages may be
11 awarded upon proof that the injuries on which the action is based were caused by a
12 wanton and reckless disregard for the rights and safety of the person through the
13 crime of pornography involving juveniles, regardless of whether the defendant was
14 prosecuted for his acts.

15 Section 2. R.S. 14:81.1(F) is hereby amended and reenacted to read as follows:

16 §81.1. Pornography involving juveniles

17 * * *

18 F.(1) Any evidence of pornography involving a child under the age of
19 seventeen shall be contraband. Such contraband shall be seized in accordance with
20 law and shall be disposed of in accordance with R.S. 46:1845.

1 (2) Upon the filing of any information or indictment by the prosecuting
2 authority for a violation of this Section, the investigating law enforcement agency
3 which seized the photographs, films, videotapes, or other visual reproductions of
4 pornography involving juveniles shall provide copies of those reproductions to the
5 Internet crimes against children division within the attorney general's office.

6 (3) Upon receipt of the reproductions as provided in Paragraph (2) of this
7 Subsection, the Internet crimes against children division shall:

8 (a) Provide those visual reproductions to the law enforcement agency
9 representative assigned to the Child Victim Identification Program at the National
10 Center for Missing and Exploited Children.

11 (b) Request the Child Victim Identification Program provide the law
12 enforcement agency contact information for any visual reproductions recovered
13 which contain an identified victim of pornography involving juveniles as defined in
14 this Section.

15 (c) Provide case information to the Child Victim Identification Program, as
16 requested by the National Center for Missing and Exploited Children guidelines, in
17 any case where the Internet crimes against children division within the attorney
18 general's office identifies a previously unidentified victim of pornography involving
19 juveniles.

20 (4) The Internet crimes against children division shall submit to the
21 designated prosecutor the law enforcement agency contact information provided by
22 the Child Victim Identification Program at the National Center for Missing and
23 Exploited Children, for any visual reproductions involved in the case which contain
24 the depiction of an identified victim of pornography involving juveniles as defined
25 in this Section.

26 (5) In all cases in which the prosecuting authority has filed an indictment or
27 information for a violation of this Section and the victim of pornography involving
28 juveniles has been identified and is a resident of this state, the prosecuting agency
29 shall submit all of the following information to the attorney general for entry into the

Louisiana Attorney General's Exploited Children's Identification database maintained
by that office:

(a) The parish, district, and docket number of the case.

(b) The name, race, sex, and date of birth of the defendant.

(c) The identity of the victim.

(d) The contact information for the law enforcement agency which identified
a victim of pornography involving juveniles, including contact information
maintained by the Child Victim Identification Program and provided to the Internet
crimes against children division in accordance with this Section.

(6) No sentence, plea, conviction, or other final disposition shall be
invalidated due to failure to comply with the provisions of this Subsection, and no
person shall have a cause of action against the investigating law enforcement agency
or any prosecuting authority, or officer or agent thereof for failure to comply with
the provisions of this Subsection.

* * *

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Edwards

HB No. 755

Abstract: Authorizes exemplary damages for victims of child pornography and requires the sharing of information for the identification of victims.

Proposed law provides that in addition to general damages a victim of child pornography may be awarded exemplary damages upon proof that the injuries were caused by the wanton and reckless disregard for the rights and safety of the person, regardless of whether the defendant was prosecuted for his acts.

Proposed law retains present law elements and penalties for the crime of pornography involving juveniles which is defined as:

- (1) The photographing, videotaping, filming, or otherwise reproducing visually of any sexual performance involving a child under the age of 17.
- (2) The solicitation, promotion, or coercion of any child under the age of 17 for the purpose of photographing, videotaping, filming, or otherwise reproducing visually any sexual performance involving a child under the age of 17.

- (3) The intentional possession, sale, distribution, or possession with intent to sell or distribute any photographs, films, videotapes, or other visual reproductions of any sexual performance involving a child under the age of 17.
- (4) The consent of a parent, legal guardian, or custodian of a child under the age of 17 for the purpose of photographing, videotaping, filming, or otherwise reproducing visually any sexual performance involving the child.

Proposed law retains present law penalties of a fine of not more than \$10,000 and imprisonment at hard labor for not less than two years or more than 10 years, without benefit of parole, probation, or suspension of sentence. Penalties when a victim is under the age of 13 years 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. Provides for monitoring by DPS&C through the use of electronic monitoring equipment for the remainder of his natural life.

Present law provides that any evidence of pornography involving a child under the age of 17 shall be contraband. Such contraband shall be seized in accordance with law and shall be disposed of in accordance with R.S. 46:1845 (privacy provisions applicable to crimes involving juveniles).

Proposed law requires law enforcement, after the filing of an indictment or bill of information, for the crime of pornography involving juveniles, to forward copies of any visual reproductions to the Internet crimes against children division of the attorney general's office.

Proposed law requires the Internet crimes against children division of the attorney general's office to forward the reproductions and certain other information to the National Center for Missing and Exploited Children.

Proposed law requires the Internet crimes against children division of the attorney general's office to provide to the prosecutor the law enforcement agency contact information provided by the National Center for Missing and Exploited Children for any identified victim of pornography involving juveniles.

Proposed law requires prosecuting agencies to submit to the attorney general's office certain information when a La. victim has been identified for inclusion in the database maintained by that office.

Proposed law provides that the failure to comply with proposed law shall not invalidate any sentence, plea, conviction, or other final disposition.

Proposed law provides that the failure to comply with proposed law shall not be a cause of action against the investigating law enforcement agency or any prosecuting authority or officer or agent thereof.

(Amends R.S. 14:81.1(F); Adds C.C. Art. 2315.3)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill.

1. Additionally requires prosecuting agencies to submit to the attorney general's office the contact information for the law enforcement agency which identified the victim for inclusion in the database maintained by that office.