

Regular Session, 2011

HOUSE BILL NO. 86

BY REPRESENTATIVE WHITE

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

CRIME: Provides relative to sexual abuse of the physically and mentally infirm

1 AN ACT

2 To amend and reenact R.S. 14:43.1(A), (B), and (C)(3), (4), (5), and (6), 43.2(C)(3),  
3 43.3(A), (B), and (C)(3), 43.6(A) and (B)(1), 81(A), (B), (C), and (H)(3), and 81.2,  
4 to enact R.S. 14:43.1(C)(7), 43.2(D), 43.3(D), and 81(H)(4), and to repeal R.S.  
5 14:43.2(C)(4), (5), and (6), and 43.3(C)(4), (5), and (6), relative to sexual abuse of  
6 the infirm; to provide relative to sexual battery of the infirm; to provide relative to  
7 second degree sexual battery of the infirm; to provide relative to oral sexual battery  
8 of the infirm; to provide relative to indecent behavior with the infirm; to provide  
9 relative to molestation of the infirm; to provide relative to the elements of such  
10 offenses; to provide for definitions; to provide for criminal penalties; and to provide  
11 for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 14:43.1(A), (B), and (C)(3), (4), (5), and (6), 43.2(C)(3), 43.3(A),  
14 (B), and (C)(3), 43.6(A) and (B)(1), 81(A), (B), (C), and (H)(3), and 81.2 are hereby  
15 amended and reenacted and R.S. 14:43.1(C)(7), 43.2(D), 43.3(D), and 81(H)(4) are hereby  
16 enacted to read as follows:

17 §43.1. Sexual battery

18 A. Sexual battery is the intentional touching of the anus or genitals of the  
19 victim by the offender using any instrumentality or any part of the body of the  
20 offender, or the touching of the anus or genitals of the offender by the victim using

1 ~~any instrumentality or any part of the body of the victim, engaging in any of the~~  
2 ~~following acts with another person where the offender acts without the consent of the~~  
3 ~~victim, or where the act is consensual but the other person, who is not the spouse of~~  
4 ~~the offender, has not yet attained fifteen years of age and is at least three years~~  
5 ~~younger than the offender.~~

6 (1) ~~The touching of the anus or genitals of the victim by the offender using~~  
7 ~~any instrumentality or any part of the body of the offender; or~~

8 (2) ~~The touching of the anus or genitals of the offender by the victim using~~  
9 ~~any instrumentality or any part of the body of the victim. when any of the following~~  
10 ~~occur:~~

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

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

15 (3) The offender is seventeen years of age or older and any of the following  
16 exist:

17 (a) The act is without consent of the victim, and the victim is paraplegic,  
18 quadriplegic, or is otherwise incapable of preventing the act due to a physical  
19 disability.

20 (b) The victim has an intelligence quotient of seventy or lower.

21 (c) The act is without consent of the victim, and the victim is sixty-five years  
22 of age or older.

23 B. Lack of knowledge of the victim's age or physical or mental capacity shall  
24 not be a defense. However, ~~where the victim is under seventeen,~~ normal medical  
25 treatment or normal sanitary care of ~~an infant~~ the victim shall not be construed as an  
26 offense under the provisions of this Section.

27 C.

28 \* \* \*

(3) Whoever commits the crime of sexual battery by violating the provisions of Paragraph (A)(3) of this Section shall be imprisoned at hard labor for not less than twenty-five years nor more than ninety-nine years. At least twenty-five years of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence.

~~(3)~~(4) Upon completion of the term of imprisonment imposed in accordance with ~~Paragraph (2)~~ Paragraphs (2) and (3) of this Subsection, 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.

~~(4)~~(5) 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 such monitoring.

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

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

### §43.2. Second degree sexual battery

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1           (3)(a) Any person who is seventeen years of age or older who commits the  
2           crime of second degree sexual battery on a victim who is physically or mentally  
3           infirm or a victim who is sixty-five years of age or older, shall be punished by  
4           imprisonment at hard labor for not less than twenty-five years nor more than ninety-  
5           nine years. At least twenty-five years of the sentence imposed shall be served  
6           without benefit of parole, probation, or suspension of sentence.

7           (b) For purposes of this Section:

8           (i) "Mentally infirm" means any person who has an intelligence quotient of  
9           seventy or lower.

10          (ii) "Physically infirm" means any person who is paraplegic, quadriplegic,  
11          or is otherwise physically incapable of preventing the act due to a physical disability.

12          ~~(3)~~D.(1) Upon completion of the term of imprisonment imposed in  
13          accordance with ~~Paragraph (2) of this Subsection~~ Paragraphs (C)(2) and (3) of this  
14          Section, the offender shall be monitored by the Department of Public Safety and  
15          Corrections through the use of electronic monitoring equipment for the remainder  
16          of his natural life.

17          ~~(4)~~(2) Unless it is determined by the Department of Public Safety and  
18          Corrections, pursuant to rules adopted in accordance with the provisions of this  
19          Subsection, that a sexual offender is unable to pay all or any portion of such costs,  
20          each sexual offender to be electronically monitored shall pay the cost of such  
21          monitoring.

22          ~~(5)~~(3) The costs attributable to the electronic monitoring of an offender who  
23          has been determined unable to pay shall be borne by the department if, and only to  
24          the degree that sufficient funds are made available for such purpose whether by  
25          appropriation of state funds or from any other source.

26          ~~(6)~~(4) The Department of Public Safety and Corrections shall develop, adopt,  
27          and promulgate rules in the manner provided in the Administrative Procedure Act  
28          that provide for the payment of such costs. Such rules shall contain specific  
29          guidelines which shall be used to determine the ability of the offender to pay the

required costs and shall establish the reasonable costs to be charged. Such rules may provide for a sliding scale of payment so that an offender who is able to pay a portion, but not all, of such costs may be required to pay such portion.

§43.3. Oral sexual battery

A. Oral sexual battery is the 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, ~~engaging in any of the following acts with another person, who is not the spouse of the offender when the other person has not yet attained fifteen years of age and is at least three years younger than the offender:~~

~~(1) The touching of the anus or genitals of the victim by the offender using the mouth or tongue of the offender; or~~

~~(2) 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:~~

(1) The victim, who is not the spouse of the offender, is under the age of fifteen years and is at least three years younger than the offender.

(2) The offender is seventeen years of age or older and any of the following exist:

(a) The act is without the consent of the victim, and the victim is paraplegic, quadriplegic, or is otherwise incapable of preventing the act due to a physical disability.

(b) The victim has an intelligence quotient of seventy or lower.

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

B. Lack of knowledge of the victim's age or mental or physical capacity shall not be a defense.

C.

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(3) Whoever commits the crime of oral sexual battery by violating the provisions of Paragraph (A)(2) of this Section shall be imprisoned at hard labor for not less than twenty-five years nor more than ninety-nine years. At least twenty-five years of the sentence imposed shall be served without parole, probation, or suspension of sentence.

(3)D.(1) Upon completion of the term of imprisonment imposed in accordance with ~~Paragraph (2) of this Subsection~~ Paragraphs (C)(2) and (3) of this Section, 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.

~~(4)~~(2) 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 such monitoring.

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

~~(6)~~(4) The Department of Public Safety and Corrections shall develop, adopt, and promulgate rules in the manner provided in the Administrative Procedure Act, that provide for the payment of such costs. Such rules shall contain specific guidelines which shall be used to determine the ability of the offender to pay the required costs and shall establish the reasonable costs to be charged. Such rules may provide for a sliding scale of payment so that an offender who is able to pay a portion, but not all, of such costs may be required to pay such portion.

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

A. Notwithstanding any other provision of law to the contrary, upon a first conviction of R.S. 14:42 (aggravated rape), R.S. 14:42.1 (forcible rape), R.S. 14:43.2 (second degree sexual battery), R.S. 14:78.1 (aggravated incest), ~~R.S. 14:81.2(E)~~ R.S. 14:81.2(D)(1) (molestation of a juvenile when the victim is under the age of thirteen), and R.S. 14:89.1 (aggravated crime against nature), the court may sentence the offender to be treated with medroxyprogesterone acetate (MPA), according to a schedule of administration monitored by the Department of Public Safety and Corrections.

B.(1) Notwithstanding any other provision of law to the contrary, upon a second or subsequent conviction of R.S. 14:42 (aggravated rape), R.S. 14:42.1 (forcible rape), R.S. 14:43.2 (second degree sexual battery), R.S. 14:78.1 (aggravated incest), ~~R.S. 14:81.2(E)~~ R.S. 14:81.2(D)(1) (molestation of a juvenile when the victim is under the age of thirteen), and R.S. 14:89.1 (aggravated crime against nature), the court shall sentence the offender to be treated with medroxyprogesterone acetate (MPA) according to a schedule of administration monitored by the Department of Public Safety and Corrections.

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§81. Indecent behavior with juveniles or the infirm

A.(1) Indecent behavior with juveniles is the commission of any of the following acts with the intention of arousing or gratifying the sexual desires of either person:

(1)(a) Any lewd or lascivious act upon the person or in the presence of any child under the age of seventeen, where there is an age difference of greater than two years between the two persons. Lack of knowledge of the child's age shall not be a defense; or defense.

~~(2)~~(b) The transmission, delivery, or utterance of any textual, visual, written, or oral communication depicting lewd or lascivious conduct, text, words, or images to any person reasonably believed to be under the age of seventeen and reasonably believed to be at least two years younger than the offender. It shall not be a defense

1 that the person who actually receives the transmission is not under the age of  
2 seventeen.

3 (2)(a) Indecent behavior with the infirm is the commission of any of the  
4 following acts by a person who is seventeen years of age or older with the intention  
5 of arousing or gratifying the sexual desires of either person:

6 (i) Any lewd or lascivious act upon the person or in the presence of any  
7 person who is physically or mentally infirm.

8 (ii) The transmission, delivery, or utterance of any textual, visual, written,  
9 or oral communication depicting lewd or lascivious conduct, text, words, or images  
10 to any person who is physically or mentally infirm.

11 (b) Lack of knowledge of the victim's mental or physical capacity shall not  
12 be a defense.

13 B. The trial judge shall have the authority to issue any necessary orders to  
14 protect the safety of the ~~child~~ victim during the pendency of the criminal action and  
15 beyond its conclusion.

16 C. For purposes of this Section:

17 (1) "Mentally infirm" means a person who has an intelligence quotient of  
18 seventy or lower.

19 (2) "Physically infirm" means a person who is paraplegic, quadriplegic, or  
20 is otherwise incapable of preventing the act due to a physical disability.

21 (3) ~~C. For purposes of this Section, "textual,~~ "Textual, visual, written, or  
22 oral communication" means any communication of any kind, whether electronic or  
23 otherwise, made through the use of the United States mail, any private carrier,  
24 personal courier, computer online service, Internet service, local bulletin board  
25 service, Internet chat room, electronic mail, online messaging service, or personal  
26 delivery or contact.

27 \* \* \*

28 H.

29 \* \* \*



(3) Whoever commits the crime of indecent behavior with the infirm by violating the provisions of Paragraph (A)(2) of this Section shall be imprisoned at hard labor for not less than two nor more than twenty-five years. At least two years of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence.

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

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## §81.2. Molestation of a juvenile or the infirm

A.(1) Molestation of a juvenile is the commission by anyone over the age of seventeen of any lewd or lascivious act upon the person or in the presence of any child under the age of seventeen, where there is an age difference of greater than two years between the two persons, with the intention of arousing or gratifying the sexual desires of either person, by the use of force, violence, duress, menace, psychological intimidation, threat of great bodily harm, or by the use of influence by virtue of a position of control or supervision over the juvenile. Lack of knowledge of the juvenile's age shall not be a defense.

(2)(a) Molestation of the infirm is the commission by anyone over the age of seventeen of any lewd or lascivious act upon the victim or in the presence of any victim with the intention of arousing or gratifying the sexual desires of either person, by the use of force, violence, duress, menace, psychological intimidation, threat of great bodily harm, or by the use of influence by virtue of a position of control or supervision over the victim, when any of the following occur:

(i) The victim is a paraplegic, quadriplegic, or is otherwise incapable of preventing the act due to a physical disability.

(ii) The victim has an intelligence quotient of seventy or less.

(iii) The victim is sixty-five years of age or older.

1            (b) Lack of knowledge of the victim's age or mental or physical capacity  
2            shall not be a defense.

3            B.(1) Whoever commits the crime of molestation of a juvenile, when the  
4            victim is thirteen years of age or older but has not yet attained the age of seventeen,  
5            shall be fined not more than five thousand dollars, or imprisoned, with or without  
6            hard labor, for not less than five nor more than ten years, or both; the defendant shall  
7            not be eligible to have his conviction set aside or his prosecution dismissed in  
8            accordance with the provisions of Code of Criminal Procedure Article 893.

9            ~~C.~~(2) Whoever commits the crime of molestation of a juvenile, when the  
10           victim is thirteen years of age or older but has not yet attained the age of seventeen,  
11           and when the offender has control or supervision over the juvenile, shall be fined not  
12           more than ten thousand dollars, or imprisoned, with or without hard labor, for not  
13           less than five nor more than twenty years, or both the defendant shall not be eligible  
14           to have his conviction set aside or his prosecution dismissed in accordance with  
15           Code of Criminal Procedure Article 893.

16           (3)(a) Whoever commits the crime of molestation of a juvenile, when the  
17           victim is thirteen years of age or older but has not yet attained the age of seventeen,  
18           and when the offender is an educator of the juvenile, shall be fined not more than ten  
19           thousand dollars, or imprisoned, with or without hard labor, for not less than five nor  
20           more than forty years, or both. At least five years of the sentence imposed shall be  
21           without the benefit of parole, probation, or suspension of sentence, and the defendant  
22           shall not be eligible to have his conviction set aside or his prosecution dismissed in  
23           accordance with Code of Criminal Procedure Article 893.

24           (b) For purposes of this Subsection, "educator" means any teacher or  
25           instructor, administrator, staff person, or employee of any public or private  
26           elementary, secondary, vocational-technical training, special, or postsecondary  
27           school or institution, including any teacher aide, paraprofessional, school bus driver,  
28           food service worker, and other clerical, custodial, or maintenance personnel  
29           employed by a private, city, parish, or other local public school board.

1           ~~D.C.~~(1) Whoever commits the crime of molestation of a juvenile by violating  
2           the provisions of Paragraph (A)(1) of this Section, when the incidents of molestation  
3           recur during a period of more than one ~~year~~ year, shall, on first conviction, be fined  
4           not more than ten thousand dollars or imprisoned, with or without hard labor, for not  
5           less than five nor more than forty years, or both. At least five years of the sentence  
6           imposed shall be without benefit of parole, probation, or suspension of sentence.  
7           After five years of the sentence have been served, the offender, who is otherwise  
8           eligible, may be eligible for parole if a licensed psychologist, medical psychologist,  
9           or a licensed clinical social worker or a board-certified psychiatrist, after  
10          psychological examination, including testing, approves.

11           (2) Conditions of parole shall include treatment in a qualified sex offender  
12          program for a minimum of five years, or until expiration of sentence, whichever  
13          comes first. The state shall be responsible for the cost of testing but the offender  
14          shall be responsible for the cost of the treatment program. It shall also be a condition  
15          of parole that the offender be prohibited from being alone with a child without the  
16          supervision of another adult.

17           (3) For purposes of this Subsection, a "qualified sex offender program"  
18          means one which includes both group and individual therapy and arousal  
19          reconditioning. Group therapy shall be conducted by two therapists, one male and  
20          one female, at least one of whom is licensed as a psychologist or medical  
21          psychologist or is board certified as a psychiatrist or clinical social worker.

22           ~~(4) Repealed by Acts 2006, No. 36, §2.~~

23           ~~E.D.~~(1) Whoever commits the crime of molestation of a juvenile when the  
24          victim is under the age of thirteen years shall be imprisoned at hard labor for not less  
25          than twenty-five years nor more than ninety-nine years. At least twenty-five years  
26          of the sentence imposed shall be served without benefit of probation, parole, or  
27          suspension of sentence.

28           (2) Whoever commits the crime of molestation of the infirm shall be  
29          imprisoned at hard labor for not less than twenty-five years nor more than ninety-

1        nine years. At least twenty-five years of the sentence imposed shall be served  
2        without benefit of probation, parole, or suspension of sentence.

3                ~~(2)~~(3) Upon completion of the term of imprisonment imposed in accordance  
4        with ~~Paragraph (1)~~ Paragraphs (1) and (2) of this Subsection, the offender shall be  
5        monitored by the Department of Public Safety and Corrections through the use of  
6        electronic monitoring equipment for the remainder of his natural life.

7                ~~(3)~~(4) Unless it is determined by the Department of Public Safety and  
8        Corrections, pursuant to rules adopted in accordance with the provisions of this  
9        Subsection, that a sexual offender is unable to pay all or any portion of such costs,  
10       each sexual offender to be electronically monitored shall pay the cost of such  
11       monitoring.

12               ~~(4)~~(5) The costs attributable to the electronic monitoring of an offender who  
13       has been determined unable to pay shall be borne by the department if, and only to,  
14       the degree that sufficient funds are made available for such purpose whether by  
15       appropriation of state funds or from any other source.

16               ~~(5)~~(6) The Department of Public Safety and Corrections shall develop, adopt,  
17       and promulgate rules in the manner provided in the Administrative Procedure Act  
18       that provide for the payment of such costs. Such rules shall contain specific  
19       guidelines which shall be used to determine the ability of the offender to pay the  
20       required costs and shall establish the reasonable costs to be charged. Such rules may  
21       provide for a sliding scale of payment so that an offender who is able to pay a  
22       portion, but not all, of such costs may be required to pay such portion.

23               ~~F.(1) Whoever commits the crime of molestation of a juvenile, when the~~  
24       ~~victim is thirteen years of age or older but has not yet attained the age of seventeen,~~  
25       ~~and when the offender is an educator of the juvenile, shall be fined not more than ten~~  
26       ~~thousand dollars, or imprisoned, with or without hard labor, for not less than five nor~~  
27       ~~more than forty years, or both. At least five years of the sentence imposed shall be~~  
28       ~~without the benefit of parole, probation, or suspension of sentence and the defendant~~

1 shall not be eligible to have his conviction set aside or his prosecution dismissed in  
2 accordance with Code of Criminal Procedure Article 893.

3 (2) ~~For purposes of this Subsection, "educator" means any teacher or~~  
4 ~~instructor, administrator, staff person, or employee of any public or private~~  
5 ~~elementary, secondary, vocational-technical training, special, or post-secondary~~  
6 ~~school or institution, including any teacher aide, paraprofessional, school bus driver,~~  
7 ~~food service worker, and other clerical, custodial, or maintenance personnel~~  
8 ~~employed by a private, city, parish, or other local public school board.~~

9 G.E.(1) In addition, the court shall order that the personal property used in  
10 the commission of the offense shall be seized and impounded, and after conviction,  
11 sold at public sale or public auction by the district attorney in accordance with R.S.  
12 15:539.1.

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

19 Section 2. R.S. 14:43.2(C)(4), (5), and (6) and 43.3(C)(4), (5), and (6) are hereby  
20 repealed in their entirety.

21 Section 3. The Louisiana State Law Institute is hereby directed to change all  
22 references in Louisiana law from "indecent behavior with juveniles" to "indecent behavior  
23 with juveniles or the infirm" and all references from "molestation of a juvenile" to  
24 "molestation of a juvenile or the infirm".

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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)]

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White

HB No. 86

**Abstract:** Amends crimes involving sexual battery, indecent behavior, and molestation to include elements of sexual abuse of the infirm and provides for criminal penalties.

Present law provides for the elements and criminal penalties for the crimes of sexual battery, second degree sexual battery, oral sexual battery, indecent behavior with juveniles, and molestation of a juvenile.

Proposed law amends present law to provide that it shall also be unlawful for any person to engage in the prohibited activities defined by present law when the offender is 17 or older and any of the following occur:

- (1) The act is without the consent of the victim, and the victim is paraplegic, quadriplegic, or is otherwise incapable of preventing the act due to a physical disability.
- (2) The victim has an intelligence quotient of 70 or lower.
- (3) The act is without the consent of the victim, and the victim is 65 or older.

Proposed law retains present law defenses and further provides that lack of knowledge of the victim's mental or physical capacity is not a defense.

Proposed law provides that whoever violates these provisions of proposed law shall be imprisoned at hard labor for not less than 25 nor more than 99 years, with at least 25 years of the sentence imposed being served without benefit of parole, probation, or suspension of sentence. For the crimes of sexual battery, second degree sexual battery, oral sexual battery, and molestation, provides that upon completion of the term of imprisonment, the offender shall be electronically monitored by DPS&C for the remainder of his natural life.

Proposed law amends present law to prohibit indecent behavior with the infirm which is the commission of any of the following acts by any person who is 17 or older with the intention of arousing or gratifying the sexual desires of either person:

- (1) Any lewd or lascivious act upon the person or in the presence of any person who is physically or mentally infirm.
- (2) The transmission, delivery, or utterance of any textual, visual, written, or oral communication depicting lewd or lascivious conduct, text, words, or images to any person who is physically or mentally infirm.

Proposed law amends present law to provide that the trial judge shall have the authority to issue any necessary orders to protect the safety of any victim of this crime during the pendency of the criminal action and beyond its conclusion.

Proposed law defines "mentally infirm" and "physically infirm".

(Amends R.S. 14:43.1(A), (B), and (C)(3), (4), (5), and (6), 43.2(C)(3), 43.3(A), (B), and (C)(3), 43.6(A) and (B)(1), 81(A), (B), (C), and (H)(3), and 81.2; Adds R.S. 14:43.1(C)(7),

43.2(D), 43.3(D), and 81(H)(4); Repeals R.S. 14:43.2(C)(4), (5), and (6) and 43.3(C)(4), (5), and (6))