

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 a person with a physical or mental disability

1 AN ACT

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

12 Be it enacted by the Legislature of Louisiana:

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

16 §43.1. Sexual battery

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

1 following acts with another person where the offender acts without the consent of the  
2 victim, or where the act is consensual but the other person, who is not the spouse of  
3 the offender, has not yet attained fifteen years of age and is at least three years  
4 younger than the offender:

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

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

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

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

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

16 (a) The act is without consent of the victim, and the victim is prevented from  
17 resisting the act because either of the following conditions exist:

18 (i) The victim has paraplegia, quadriplegia, or is otherwise physically  
19 incapable of preventing the act due to a physical disability.

20 (ii) The victim is incapable, through unsoundness of mind, of understanding  
21 the nature of the act, and the offender knew or should have known of the victim's  
22 incapacity.

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

25 \* \* \*

26 C.

27 \* \* \*

28 (3) Whoever commits the crime of sexual battery by violating the provisions  
29 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

\* \* \*

C.

\* \* \*

(3) Any person who is seventeen years of age or older who commits the  
crime of second degree sexual battery shall be punished by imprisonment at hard

1 labor for not less than twenty-five nor more than ninety-nine years, at least twenty-  
2 five years of the sentence imposed being served without benefit of parole, probation,  
3 or suspension of sentence, when either of the following conditions exist:

4 (a) The victim has paraplegia, quadriplegia, or is otherwise physically  
5 incapable of preventing the act due to a physical disability.

6 (b) The victim is incapable, through unsoundness of mind, of understanding  
7 the nature of the act, and the offender knew or should have known of the victim's  
8 incapacity.

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

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

15 ~~(4)~~(2) Unless it is determined by the Department of Public Safety and  
16 Corrections, pursuant to rules adopted in accordance with the provisions of this  
17 Subsection, that a sexual offender is unable to pay all or any portion of such costs,  
18 each sexual offender to be electronically monitored shall pay the cost of such  
19 monitoring.

20 ~~(5)~~(3) The costs attributable to the electronic monitoring of an offender who  
21 has been determined unable to pay shall be borne by the department if, and only to  
22 the degree that sufficient funds are made available for such purpose whether by  
23 appropriation of state funds or from any other source.

24 ~~(6)~~(4) The Department of Public Safety and Corrections shall develop, adopt,  
25 and promulgate rules in the manner provided in the Administrative Procedure Act  
26 that provide for the payment of such costs. Such rules shall contain specific  
27 guidelines which shall be used to determine the ability of the offender to pay the  
28 required costs and shall establish the reasonable costs to be charged. Such rules may

1 provide for a sliding scale of payment so that an offender who is able to pay a  
2 portion, but not all, of such costs may be required to pay such portion.

3 §43.3. Oral sexual battery

4 A. Oral sexual battery is the intentional touching of the anus or genitals of  
5 the victim by the offender using the mouth or tongue of the offender, or the touching  
6 of the anus or genitals of the offender by the victim using the mouth or tongue of the  
7 victim, engaging in any of the following acts with another person, who is not the  
8 spouse of the offender when the other person has not yet attained fifteen years of age  
9 and is at least three years younger than the offender:

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

12 (2) ~~The touching of the anus or genitals of the offender by the victim using~~  
13 ~~the mouth or tongue of the victim; when any of the following occur:~~

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

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

18 (a) The act is without the consent of the victim, and the victim is prevented  
19 from resisting the act because either of the following conditions exist:

20 (i) The victim has paraplegia, quadriplegia, or is otherwise physically  
21 incapable of preventing the act due to a physical disability.

22 (ii) The victim is incapable, through unsoundness of mind, of understanding  
23 the nature of the act, and the offender knew or should have known of the victim's  
24 incapacity.

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

27 \* \* \*

28 C.

29 \* \* \*

(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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**§81.2. Molestation of a juvenile or a person with a physical or mental disability**

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.

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

8           (a) The victim has paraplegia, quadriplegia, or is otherwise physically  
9           incapable of preventing the act due to a physical disability.

10          (b) The victim is incapable, through unsoundness of mind, of understanding  
11          the nature of the act, and the offender knew or should have known of the victim's  
12          incapacity.

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

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

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

27          (3)(a) Whoever commits the crime of molestation of a juvenile, when the  
28          victim is thirteen years of age or older but has not yet attained the age of seventeen,  
29          and when the offender is an educator of the juvenile, shall be fined not more than ten



1        thousand dollars, or imprisoned, with or without hard labor, for not less than five nor  
2        more than forty years, or both. At least five years of the sentence imposed shall be  
3        without the benefit of parole, probation, or suspension of sentence, and the defendant  
4        shall not be eligible to have his conviction set aside or his prosecution dismissed in  
5        accordance with Code of Criminal Procedure Article 893.

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

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

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

28                (3) For purposes of this Subsection, a "qualified sex offender program"  
29       means one which includes both group and individual therapy and arousal

1 reconditioning. Group therapy shall be conducted by two therapists, one male and  
2 one female, at least one of whom is licensed as a psychologist or medical  
3 psychologist or is board certified as a psychiatrist or clinical social worker.

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

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

10 (2) Whoever commits the crime of molestation of a person with a physical  
11 or mental disability shall be imprisoned at hard labor for not less than twenty-five  
12 years nor more than ninety-nine years. At least twenty-five years of the sentence  
13 imposed shall be served without benefit of probation, parole, or suspension of  
14 sentence.

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

19 ~~(3)~~(4) Unless it is determined by the Department of Public Safety and  
20 Corrections, pursuant to rules adopted in accordance with the provisions of this  
21 Subsection, that a sexual offender is unable to pay all or any portion of such costs,  
22 each sexual offender to be electronically monitored shall pay the cost of such  
23 monitoring.

24 ~~(4)~~(5) The costs attributable to the electronic monitoring of an offender who  
25 has been determined unable to pay shall be borne by the department if, and only to,  
26 the degree that sufficient funds are made available for such purpose whether by  
27 appropriation of state funds or from any other source.

28 ~~(5)~~(6) The Department of Public Safety and Corrections shall develop, adopt,  
29 and promulgate rules in the manner provided in the Administrative Procedure Act

1       that provide for the payment of such costs. Such rules shall contain specific  
2       guidelines which shall be used to determine the ability of the offender to pay the  
3       required costs and shall establish the reasonable costs to be charged. Such rules may  
4       provide for a sliding scale of payment so that an offender who is able to pay a  
5       portion, but not all, of such costs may be required to pay such portion.

6               ~~F.(1) Whoever commits the crime of molestation of a juvenile, when the~~  
7       ~~victim is thirteen years of age or older but has not yet attained the age of seventeen,~~  
8       ~~and when the offender is an educator of the juvenile, shall be fined not more than ten~~  
9       ~~thousand dollars, or imprisoned, with or without hard labor, for not less than five nor~~  
10      ~~more than forty years, or both. At least five years of the sentence imposed shall be~~  
11      ~~without the benefit of parole, probation, or suspension of sentence and the defendant~~  
12      ~~shall not be eligible to have his conviction set aside or his prosecution dismissed in~~  
13      ~~accordance with Code of Criminal Procedure Article 893.~~

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

20              G.E.(1) In addition, the court shall order that the personal property used in  
21      the commission of the offense shall be seized and impounded, and after conviction,  
22      sold at public sale or public auction by the district attorney in accordance with R.S.  
23      15:539.1.

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

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

3           Section 3. The Louisiana State Law Institute is hereby directed to change all  
4 references in Louisiana law from "molestation of a juvenile" to "molestation of a juvenile  
5 or a person with a physical or mental disability".

### 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)]

White

HB No. 86

**Abstract:** Amends crimes involving sexual battery and molestation to include elements of sexual abuse of persons with a mental or physical disability and persons 65 years of age and older 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, 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 victim has paraplegia, quadriplegia, or is otherwise incapable of preventing the act due to a physical disability.
- (2) 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.
- (3) The victim is 65 years or older.

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.

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

### Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the original bill.

1. Changed all references to a person with disabilities as "the infirm" to "a person with a physical or mental disability".

2. Changed all references to victims as a "paraplegic" or "quadriplegic" to the victim "has paraplegia, quadriplegia, or is otherwise physically incapable of preventing the act due to a physical disability".
3. Changed all references to victims with "an intelligence quotient of seventy or lower" to "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".
4. Deleted provision which stated that the offender's lack of knowledge of the victim's physical or mental capacity shall not be a defense to the crime.
5. Deleted proposed law amendments to the crime of indecent behavior with juveniles.