

Regular Session, 2011

HOUSE BILL NO. 86

BY REPRESENTATIVES WHITE, ARNOLD, BALDONE, BARROW, BILLIOT, HENRY BURNS, CARMODY, DOVE, EDWARDS, ELLINGTON, GREENE, HAZEL, HILL, HOFFMANN, HUTTER, KATZ, LEBAS, LIGI, LORUSSO, POPE, PUGH, RICHARD, RICHARDSON, SEABAUGH, SIMON, GARY SMITH, JANE SMITH, ST. GERMAIN, THIBAUT, AND WILLIAMS

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

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

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

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

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

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

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

18 (a) The act is without consent of the victim, and the victim is prevented from
19 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 consent of the victim, and the victim is sixty-five years
26 of age or older.

27 * * *

28 C.

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(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) Any person who is seventeen years of age or older who commits the
2 crime of second degree sexual battery shall be punished by imprisonment at hard
3 labor for not less than twenty-five nor more than ninety-nine years, at least twenty-
4 five years of the sentence imposed being served without benefit of parole, probation,
5 or suspension of sentence, when any of the following conditions exist:

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

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

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

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 prevented from resisting the act because either of the following conditions exist:~~

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

~~(ii) 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.~~

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

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1 C.

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

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

13 ~~(4)~~(2) Unless it is determined by the Department of Public Safety and
14 Corrections, pursuant to rules adopted in accordance with the provisions of this
15 Subsection, that a sexual offender is unable to pay all or any portion of such costs,
16 each sexual offender to be electronically monitored shall pay the cost of such
17 monitoring.

18 ~~(5)~~(3) The costs attributable to the electronic monitoring of an offender who
19 has been determined unable to pay shall be borne by the department if, and only to
20 the degree that, sufficient funds are made available for such purpose whether by
21 appropriation of state funds or from any other source.

22 ~~(6)~~(4) The Department of Public Safety and Corrections shall develop, adopt,
23 and promulgate rules in the manner provided in the Administrative Procedure Act,
24 that provide for the payment of such costs. Such rules shall contain specific
25 guidelines which shall be used to determine the ability of the offender to pay the
26 required costs and shall establish the reasonable costs to be charged. Such rules may
27 provide for a sliding scale of payment so that an offender who is able to pay a
28 portion, but not all, of such costs may be required to pay such portion.

29 * * *

§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.

* * *

§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 conditions exist:

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.~~ The defendant
18 shall 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.~~ The defendant shall not be
25 eligible to have his conviction set aside or his prosecution dismissed in accordance
26 with 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.