

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.

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), 43.3(A)
3 and (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.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 14:43.1(A), (B), 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 are hereby amended and reenacted and R.S. 14:43.1(C)(7), 43.2(D), and 43.3(D) are hereby enacted to read as follows:

§43.1. Sexual battery

A. Sexual battery is the intentional touching of the anus or genitals of the victim by the offender using any instrumentality or any part of the body of the offender, or the touching of the anus or genitals of the offender by the victim using any instrumentality or any part of the body of the victim, ~~engaging in any of the following acts with another person where the offender acts without the consent of the victim, or where the act is consensual but the other person, who is not the spouse of the offender, 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 any instrumentality or any part of the body of the offender; or~~

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

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

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

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

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

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

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

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

(b) 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.

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

~~(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.

§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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(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

1 the degree that, sufficient funds are made available for such purpose whether by
2 appropriation of state funds or from any other source.

3 ~~(6)~~(4) The Department of Public Safety and Corrections shall develop, adopt,
4 and promulgate rules in the manner provided in the Administrative Procedure Act,
5 that provide for the payment of such costs. Such rules shall contain specific
6 guidelines which shall be used to determine the ability of the offender to pay the
7 required costs and shall establish the reasonable costs to be charged. Such rules may
8 provide for a sliding scale of payment so that an offender who is able to pay a
9 portion, but not all, of such costs may be required to pay such portion.

10 * * *

11 §43.6. Administration of medroxyprogesterone acetate (MPA) to certain sex
12 offenders

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

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

29 * * *

§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.

(2) Molestation of a person with a physical or mental disability 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 conditions exist:

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

(b) 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.

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

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

~~€(2)~~ Whoever commits the crime of molestation of a juvenile, when the victim is thirteen years of age or older but has not yet attained the age of seventeen,

1 and when the offender has control or supervision over the juvenile, shall be fined not
2 more than ten thousand dollars, or imprisoned, with or without hard labor, for not
3 less than five nor more than twenty years, or both, ~~the~~. The defendant shall not be
4 eligible to have his conviction set aside or his prosecution dismissed in accordance
5 with Code of Criminal Procedure Article 893.

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

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

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

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

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

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

23 ~~(2)~~(3) Upon completion of the term of imprisonment imposed in accordance
24 with ~~Paragraph (1)~~ Paragraphs (1) and (2) of this Subsection, the offender shall be
25 monitored by the Department of Public Safety and Corrections through the use of
26 electronic monitoring equipment for the remainder of his natural life.

27 ~~(3)~~(4) Unless it is determined by the Department of Public Safety and
28 Corrections, pursuant to rules adopted in accordance with the provisions of this
29 Subsection, that a sexual offender is unable to pay all or any portion of such costs,

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

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

7 ~~(5)~~(6) The Department of Public Safety and Corrections shall develop, adopt,
8 and promulgate rules in the manner provided in the Administrative Procedure Act
9 that provide for the payment of such costs. Such rules shall contain specific
10 guidelines which shall be used to determine the ability of the offender to pay the
11 required costs and shall establish the reasonable costs to be charged. Such rules may
12 provide for a sliding scale of payment so that an offender who is able to pay a
13 portion, but not all, of such costs may be required to pay such portion.

14 ~~F.(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 ~~and when the offender is an educator of the juvenile, shall be fined not more than ten~~
17 ~~thousand dollars, or imprisoned, with or without hard labor, for not less than five nor~~
18 ~~more than forty years, or both. At least five years of the sentence imposed shall be~~
19 ~~without the benefit of parole, probation, or suspension of sentence and the defendant~~
20 ~~shall not be eligible to have his conviction set aside or his prosecution dismissed in~~
21 ~~accordance with Code of Criminal Procedure Article 893.~~

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

28 ~~G.E.~~(1) In addition, the court shall order that the personal property used in
29 the commission of the offense shall be seized and impounded, and after conviction,

1 sold at public sale or public auction by the district attorney in accordance with R.S.
2 15:539.1.

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

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

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____