

Regular Session, 2012

HOUSE BILL NO. 620

BY REPRESENTATIVE THIERRY

SEX OFFENSE/REGISTRY: Provides for the unlawful use of a social networking website

1 AN ACT

2 To amend and reenact R.S. 14:91.5 and to enact R.S. 15:543.1(18), relative to the unlawful  
3 use of a social networking website; to provide relative to the crime of unlawful use  
4 of a social networking website; to provide for definitions; to remove the exception  
5 regarding permission by the court or the probation or parole officer; to provide notice  
6 of this crime to sex offenders; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 14:91.5 is hereby amended and reenacted to read as follows:

9 §91.5. Unlawful use ~~or access~~ of a social media networking website

10 A. The following shall constitute unlawful use ~~or access~~ of a social media  
11 networking website:

12 (1) The ~~using or accessing~~ intentional use of a social networking websites,  
13 ~~chat rooms, and peer-to-peer networks~~ website by a person who is required to  
14 register as a sex offender and who was previously convicted of R.S. 14:81 (indecent  
15 behavior with juveniles), R.S. 14:81.1 (pornography involving juveniles), R.S.  
16 14:81.3 (computer-aided solicitation of a minor), or R.S. 14:283 (video voyeurism)  
17 or was ~~previously~~ convicted of a sex offense as defined in R.S. 15:541 in which the  
18 victim of the sex offense was a minor.

19 (2) The provisions of this Section shall also apply to any person previously  
20 convicted for an offense under the laws of another state, or military, territorial,

1 foreign, tribal, or federal law which is equivalent to the offenses provided for in  
2 Paragraph (1) of this Subsection, unless the tribal court or foreign conviction was not  
3 obtained with sufficient safeguards for fundamental fairness and due process for the  
4 accused as provided by the federal guidelines adopted pursuant to the Adam Walsh  
5 Child Protection and Safety Act of 2006.

6 ~~B. The use or access of social media shall not be considered unlawful for~~  
7 ~~purposes of this Section if the offender has permission to use or access social~~  
8 ~~networking websites, chat rooms, or peer-to-peer networks from his probation or~~  
9 ~~parole officer or the court of original jurisdiction.~~

10 ~~C.~~ For purposes of this Section:

11 ~~(1) "Chat room" means any Internet website through which users have the~~  
12 ~~ability to communicate via text and which allows messages to be visible to all other~~  
13 ~~users or to a designated segment of all other users.~~

14 ~~(2)(1)~~ "Minor" means a person under the age of eighteen years.

15 ~~(3) "Peer-to-peer network" means a connection of computer systems~~  
16 ~~whereby files are shared directly between the systems on a network without the need~~  
17 ~~of a central server.~~

18 ~~(4)(2)(a)~~ "Social networking website" means an Internet website the primary  
19 purpose of which is facilitating social interaction with other users of the website and  
20 that has any all of the following capabilities:

21 ~~(a)(i)~~ Allows users to create web pages or profiles about themselves that are  
22 available to the general public or to any other users.

23 ~~(b)(ii)~~ Offers a mechanism for communication among users, ~~such as a forum,~~  
24 ~~chat room, electronic mail, or instant messaging~~ users.

25 (b) "Social networking website" shall not include any of the following:

26 (i) An Internet website that provides only one of the following services:  
27 photo-sharing, electronic mail, or instant messenger.

1           (ii) An Internet website the primary purpose of which is the facilitation of  
2           commercial transactions involving goods or services between its members or  
3           visitors.

4           (iii) An Internet website the primary purpose of which is the dissemination  
5           of news.

6           (iv) An Internet website of a governmental entity.

7           (3) "Use" shall mean to create a profile on a social networking website or to  
8           contact or attempt to contact other users of the social networking website.

9           ~~D.C.~~(1) Whoever commits the crime of unlawful use ~~or access~~ of a social  
10          ~~media~~ networking website shall, upon a first conviction, be fined not more than ten  
11          thousand dollars and shall be imprisoned with hard labor for not more than ten years  
12          without benefit of parole, probation, or suspension of sentence.

13          (2) Whoever commits the crime of unlawful use ~~or access~~ of a social media  
14          networking website, upon a second or subsequent conviction, shall be fined not more  
15          than twenty thousand dollars and shall be imprisoned with hard labor for not less  
16          than five years nor more than twenty years without benefit of parole, probation, or  
17          suspension of sentence.

18          Section 2. R.S. 15:543.1(18) is hereby enacted to read as follows:

19          §543.1. Written notification by the courts; form to be used

20                   STATE V. \_\_\_\_\_ JUDICIAL DISTRICT COURT

21                   DOCKET # \_\_\_\_\_ PARISH OF \_\_\_\_\_

22                   DIVISION \_\_\_\_\_ STATE OF LOUISIANA

23                                   Notification to Sex Offender

24                   In accordance with R.S. 15:543, this court has the duty to provide  
25                   \_\_\_\_\_ (name of offender) with the information necessary for  
26                   awareness of sex offender and child predator registration requirements.

27                   \_\_\_\_\_ has pled guilty to or been found guilty of a violation of  
28                   R.S. \_\_\_\_\_. Based on the provisions of Chapter 3-B of Title 15 of the Louisiana  
29                   Revised Statutes of 1950 and the substance of the statute violated, IT IS ORDERED

1 that \_\_\_\_\_ must register for the period of \_\_\_\_\_ from the  
2 date of his release from prison, being placed on parole, supervised release or  
3 probation, or from the date of his conviction, if the offender is not sentenced to a  
4 term of imprisonment or jail. Additionally, since \_\_\_\_\_ (hereinafter  
5 referred to as offender) has been convicted of:

6 ( ) An aggravated offense as defined in R.S. 15:541, the offender must  
7 update his/her registration, in person, every ninety days from the date of initial  
8 registration, with the appropriate law enforcement agencies as provided in R.S.  
9 15:542.

10 ( ) A sexual offense involving a victim who is a minor as defined in R.S.  
11 15:541, the offender must update his/her registration, in person, every six months  
12 from the date of initial registration, with the appropriate law enforcement agencies  
13 as provided in R.S. 15:542.

14 ( ) An offense not defined in R.S. 15:541, as an aggravated offense or a  
15 sexual offense involving a victim who is a minor, the offender must update his/her  
16 registration, in person, annually from the date of initial registration, with the  
17 appropriate law enforcement agencies as provided in R.S. 15:542.

18 Based on the foregoing you are hereby notified of the following:

19 (1) The offender, within three (3) business days of establishing residence in  
20 Louisiana or if a current resident, within three (3) business days after conviction or  
21 adjudication if not immediately incarcerated or taken into custody, or within three  
22 (3) business days after release from confinement, shall obtain and provide the  
23 following information to each sheriff or police department in accordance with R.S.  
24 15:542(B) (except in Orleans Parish where registration shall take place with the New  
25 Orleans Police Department):

26 (a) Name and any aliases used by the offender.

27 (b) Physical address or addresses of residence.

28 (c) Name and physical address of place of employment. If the offender does  
29 not have a fixed place of employment, the offender shall provide information with

1 as much specificity as possible regarding the places where he works, including but  
2 not limited to travel routes used by the offender.

3 (d) Name and physical address of the school in which he is a student.

4 (e) Two forms of proof of residence for each residential address provided,  
5 including but not limited to a driver's license, bill for utility service, and bill for  
6 telephone service. If those forms of proof of residence are not available, the offender  
7 may provide an affidavit of an adult resident living at the same address. The  
8 affidavit shall certify that the affiant understands his obligation to provide written  
9 notice pursuant to R.S. 15:542.1.4 to the appropriate law enforcement agency with  
10 whom the offender last registered when the offender no longer resides at the  
11 residence provided in the affidavit.

12 (f) The crime for which he was convicted and the date and place of such  
13 conviction, and if known by the offender, the court in which the conviction was  
14 obtained, the docket number of the case, the specific statute under which he was  
15 convicted, and the sentence imposed.

16 (g) A current photograph, fingerprints, palm prints, and a DNA sample.

17 (h) Telephone numbers, including fixed location phone and mobile phone  
18 numbers assigned to the offender or associated with any residence address of the  
19 offender.

20 (i) A description of every vehicle registered to or operated by the offender,  
21 including license plate number and a copy of the offender's driver's license or  
22 identification card.

23 (j) Social security number and date of birth.

24 (k) A description of the physical characteristics of the offender, including but  
25 not limited to sex, race, hair color, eye color, height, age, weight, scars, tattoos, or  
26 other identifying marks on the body of the offender.

27 (l) Every e-mail address, online screen name or other online identity used by  
28 the offender to communicate on the Internet.

1 (m) Temporary lodging information regarding any place where the offender  
2 plans to stay for seven or more days and the length of the stay.

3 (n) Travel and immigration documents, including but not limited to passports  
4 and documents establishing immigration status.

5 (2) The offender shall register with the sheriff and police chief in each of  
6 his/her residence(s) and with the sheriff of the parish in which the offender is  
7 employed and attends school and, for initial registration only, with the sheriff in the  
8 parish of the offender's conviction in accordance with R.S. 15:542. If the offender  
9 lives, works, or attends school in Orleans Parish, however, the offender shall register  
10 with the New Orleans Police Department and not with the sheriff of that parish.

11 (3) If the offender is incarcerated as a result of the crime, the offender shall  
12 provide all information listed in Paragraph (1) of this Section to the Department of  
13 Public Safety and Corrections, or if a juvenile, to the office of juvenile justice, within  
14 ten (10) days prior to release from confinement. The offender shall still appear in  
15 person at the sheriff's office within three (3) business days of release from  
16 confinement.

17 (4) During the declaration of an emergency, any offender required to register  
18 who enters an emergency shelter shall, within the first twenty-four (24) hours of  
19 admittance, notify the management of the facility, the chief of police of the  
20 municipality, and the sheriff of the parish in which the shelter is located of his sex  
21 offender status in accordance with R.S. 15:543.2.

22 (5) An offender required to register has a duty to provide notice of change  
23 of address or other registration information to the sheriff of the parish of residence  
24 within three business days. If the new or additional residence is located in a different  
25 parish, then offender must register with the sheriff of the parish in which the new or  
26 additional residence is located. The offender shall also send written notice within  
27 three business days of re-registering in the new parish to the sheriff of the parish of  
28 former registration in accordance with R.S. 15:542.1.2.

1           (6) The offender shall give notice of the crime for which he was convicted,  
2 his name, address, a physical description, and a photograph to the following in  
3 accordance with R.S. 15:542(B)(1):

4           (a) At least one person in every residence or business within a one-mile  
5 radius in a rural area and a three-tenths of a mile radius in an urban or suburban area  
6 of the address of the residence where the offender will reside upon release, including  
7 all adult residents of the residence of the offender.

8           (b) The superintendent of the school district where the offender will reside.

9           (c) The lessor, landlord, or owner of the residence or the property on which  
10 he resides.

11           (d) The superintendent of the park, playground, and recreation districts  
12 within the designated area where the offender will reside only if the victim was under  
13 eighteen (18) years of age at the time of the commission of the offense.

14           \*Any person convicted of a violation of R.S. 14:89 shall not have to include  
15 a photograph in the notice described in Paragraph (b) of this Subsection.

16           \*Juveniles adjudicated for a crime requiring registration DO NOT have to  
17 provide this community notice.

18           (7) In accordance with R.S. 15:542.1, community notification shall be given  
19 by mail within twenty-one days of the date of conviction, if the offender is not taken  
20 into custody at the time of conviction, and within twenty-one days of the date of  
21 release from confinement if sentenced to a term of imprisonment. This notification  
22 shall also occur within twenty-one days of each time the offender changes his  
23 residence within twenty-one days of establishing residency in the new locale. This  
24 notification shall also occur at least every five years, whether or not the offender  
25 changes residences. This notification shall occur in each jurisdiction in which the  
26 offender regularly resides.

27           \*Juveniles adjudicated for a crime requiring registration DO NOT have to  
28 provide this community notice.

1 (8) In accordance with R.S. 15:542.1, community notice shall be published  
2 on two (2) separate days within this period in the official journal of the governing  
3 authority of the parish where the offender plans to reside, unless ordered to be  
4 published in a different journal or newspaper by the sheriff or local ordinance.

5 \*Those convicted of R.S. 14:89 or 92(A)(7) are not required to publish notice  
6 in the newspaper or official journal as provided in Paragraph (8).

7 \*Juveniles who are adjudicated for a crime requiring registration DO NOT  
8 have to provide this community notice.

9 (9) In accordance with R.S. 15:542.1(B), an offender who provides  
10 recreational instruction to persons under the age of seventeen (17) shall post a notice  
11 in the building or facility where such instruction is being given.

12 (10) In accordance with R.S. 15:543, an offender must, within ten (10) days  
13 prior to release from a correctional facility, provide a photograph and other relevant  
14 information noted above to the Department of Public Safety and Corrections and the  
15 office of juvenile justice for purposes of the State Sex Offender and Child Predator  
16 Registry.

17 (11) In accordance with R.S. 15:542.1.2, if an offender changes his place of  
18 residence or establishes a new or additional residence, he shall appear in person at  
19 the office of the sheriff of his parish of residence where he is currently registered  
20 within three (3) business days of the change to register the new address. If the new  
21 address is located in a different parish, then the offender shall also appear in person  
22 at the office of the sheriff of his new parish of residence within the same time period.  
23 If the offender's parish of residence is in Orleans Parish, then the registration shall  
24 take place at the New Orleans Police Department and not with the Orleans Parish  
25 Sheriff.

26 (12) In accordance with R.S. 15:542.1.2, if an offender is absent from his  
27 current address of registration for more than thirty (30) consecutive days or an  
28 aggregate of thirty (30) days or more in a calendar year, and is physically present at  
29 another address during that same period of time, the offender shall register in person

1 the new address as one of his addresses of residence. If the new address is in a  
2 parish different from his current address, he shall also register in person with the  
3 sheriff of the new parish within three (3) business days of the tolling of the time  
4 periods listed. This requirement notwithstanding, the offender shall still notify the  
5 sheriff of one of his parishes of residence in person if he is to take up temporary  
6 lodging for seven (7) or more days. It is only after the thirty-day limit is exceeded  
7 that the new registration shall occur.

8 (13) The offender shall also appear in person at the office of the sheriff of  
9 any of his parishes of residence when there is a change in the offender's name, place  
10 of employment, or enrollment. This appearance shall occur within three (3) business  
11 days of the change. If the offender's address of residence is in Orleans Parish, this  
12 registration update shall take place at the New Orleans Police Department and not  
13 with the Orleans Parish Sheriff's Office.

14 (14) The offender shall be prohibited from certain types of employment in  
15 accordance with R.S. 15:553 for the duration of the registration period. A copy of  
16 this statute is provided to you with this notification.

17 (15) In accordance with R.S. 15:542(C), the offender shall update his  
18 registration annually on the anniversary of the initial registration by appearing in  
19 person at the office of each law enforcement agency with which he is required to  
20 register and shall pay an annual registration fee of sixty dollars (\$60.00).

21 (16) Failure to comply with any of these registration and notification  
22 requirements is a felony for which an offender shall be punished by a fine of up to  
23 one thousand dollars (\$1,000.00) and imprisonment at hard labor for not less than  
24 two years nor more than ten years without benefit of parole, probation, or suspension  
25 of sentence. Upon a second or subsequent conviction, the offender shall be punished  
26 by a fine of up to three thousand dollars (\$3,000.00) and imprisonment at hard labor  
27 for not less than five years, nor more than twenty years without benefit of parole,  
28 probation, or suspension of sentence.

1 (17) For those offenders who have been convicted of a sex offense as defined  
2 in R.S. 15:541 involving a victim who was under the age of thirteen (13) at the time  
3 of the offense, R.S. 14:91.2 is applicable which prohibits such offenders from  
4 residing or being present in certain locations. A copy of this statute is provided to  
5 you with this notification.

6 (18) For those offenders who have been convicted of R.S. 14:81 (indecent  
7 behavior with juveniles), R.S. 14:81.1 (pornography involving juveniles), R.S.  
8 14:81.3 (computer-aided solicitation of a minor), or R.S. 14:283 (video voyeurism)  
9 or was convicted of a sex offense as defined in R.S. 15:541 in which the victim of  
10 the sex offense was a minor, R.S. 14:91.5 is applicable which prohibits such  
11 offenders from using certain social networking websites. A copy of this statute is  
12 provided to you with this notification.

13 THUS DONE AND SIGNED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ in  
14 open court, in \_\_\_\_\_, Louisiana.

15 \_\_\_\_\_  
16 Judge, \_\_\_\_ Judicial District Court

17 I hereby certify that the above requirements have been explained to me, that  
18 I have received a copy of the above notice of sex offender registration and  
19 notification requirements, and a copy of the statutes providing for such requirements.  
20 I also understand that I will be subject to any changes made by the legislature to the  
21 registration laws from this day forward.

22 \_\_\_\_\_  
23 (Name of Sex Offender)  
24 \_\_\_\_\_  
25 Defense Counsel Signature

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

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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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Thierry

HB No. 620

**Abstract:** Redefines the crime of unlawful use of social media by certain sex offenders, and provides for the offense of unlawful use of a social networking website.

Present law criminalizes the use or access of social networking websites, chat rooms, and peer-to-peer networks by certain sex offenders who are required to comply with the sex offender registration and notification provisions.

Present law provides for an exception if the offender has permission from his probation or parole officer or the court of original jurisdiction to use or access these social networking websites, chat rooms, or peer-to-peer networks.

Present law provides for a definition of "chat room" and "peer-to-peer network" and provides that "social networking website" means an Internet website that has any of the following capabilities:

- (1) Allows users to create web pages or profiles about themselves that are available to the general public or to any other users.
- (2) Offers a mechanism for communication among users, such as a forum, chat room, electronic mail, or instant messaging.

Proposed law amends present law and provides that it shall be unlawful for certain sex offenders who are required to register as a sex offender to "use" social networking websites and repeals the present law prohibition on the use or access of chat rooms or peer-to-peer networks.

Proposed law removes the present law provision which allows the sex offender to get permission to use social networking websites from his probation or parole officer or the court of original jurisdiction.

Proposed law removes the definition of "chat room" and "peer-to-peer network" and amends the definition of "social networking website" as follows:

- (1) Provides that a "social networking website" shall only include those Internet websites the primary purpose of which is facilitating social interaction with other users of the website and which allows users to create web pages or profiles about themselves that are available to the public or other users and offers a mechanism for communication among users.
- (2) Provides that "social networking website" shall not include an Internet website the primary purpose of which is facilitation of commercial transactions or the dissemination of news, or which provides only one of the following services: photo-sharing, electronic mail, or instant messenger.

Proposed law provides notice of this crime to sex offenders.

(Amends R.S. 14:91.5; Adds R.S. 15:543.1(18))