

Regular Session, 2012

HOUSE BILL NO. 620

BY REPRESENTATIVES THIERRY, ADAMS, BADON, BROWN, BURRELL,  
GUILLORY, HAZEL, HODGES, HONORE, HOWARD, TERRY LANDRY,  
MACK, MORENO, AND PYLANT

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 R.S. 15:543.1, relative to the unlawful use of a  
3 social networking website; to provide relative to the crime of unlawful use of a social  
4 networking website; to provide for definitions; to remove the exception regarding  
5 permission by the court or the probation or parole officer; to provide notice of this  
6 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,  
21 foreign, tribal, or federal law which is equivalent to the offenses provided for in

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

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

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

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

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

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

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

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

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

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

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

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

1                    (iii) An Internet website the primary purpose of which is the dissemination  
2                    of news.

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

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

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

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

15                    Section 2. R.S. 15:543.1 is hereby amended and reenacted to read as follows:

16                    §543.1. Written notification by the courts; form to be used

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

18                    DOCKET # \_\_\_\_\_ PARISH OF \_\_\_\_\_

19                    DIVISION \_\_\_\_\_ STATE OF LOUISIANA

20                    Notification to Sex Offender

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

24                    \_\_\_\_\_ has pled guilty to or been found guilty of a violation of  
25                    R.S. \_\_\_\_\_. Based on the provisions of Chapter 3-B of Title 15 of the Louisiana  
26                    Revised Statutes of 1950 and the substance of the statute violated, IT IS ORDERED  
27                    that \_\_\_\_\_ must register for the period of \_\_\_\_\_ from the  
28                    date of his release from prison, from the date of his being placed on parole,  
29                    supervised release or probation, or from the date of his conviction, if the offender is

1 not sentenced to a term of imprisonment or jail. Additionally, since  
2 \_\_\_\_\_ (hereinafter referred to as offender) has been convicted of:

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

7 ( ) A sexual offense involving a victim who is a minor as defined in R.S.  
8 15:541, the offender must update his/her registration, in person, every six months  
9 from the date of initial registration, with the appropriate law enforcement agencies  
10 as provided in R.S. 15:542.

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

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

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

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

24 (b) Physical address or addresses of residence.

25 (c) Name and physical address of place of employment. If the offender does  
26 not have a fixed place of employment, the offender shall provide information with  
27 as much specificity as possible regarding the places where he works, including but  
28 not limited to travel routes used by the offender.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28           (a) At least one person in every residence or business within a one-mile  
29 radius in a rural area and a three-tenths of a mile radius in an urban or suburban area

1 of the address of the residence where the offender will reside upon release, including  
2 all adult residents of the residence of the offender.

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

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

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

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

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

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

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

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

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

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

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

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

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

20          (12) In accordance with R.S. 15:542.1.2, if an offender is absent from his  
21          current address of registration for more than thirty (30) consecutive days or an  
22          aggregate of thirty (30) days or more in a calendar year, and is physically present at  
23          another address during that same period of time, the offender shall register in person  
24          the new address as one of his addresses of residence. If the new address is in a  
25          parish different from his current address, he shall also register in person with the  
26          sheriff of the new parish within three (3) business days of the tolling of the time  
27          periods listed. This requirement notwithstanding, the offender shall still notify the  
28          sheriff of one of his parishes of residence in person if he is to take up temporary

1 lodging for seven (7) or more days. It is only after the thirty-day limit is exceeded  
2 that the new registration shall occur.

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

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

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

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

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

1                    (18) For those offenders who have been convicted of R.S. 14:81 (indecent  
 2                    behavior with juveniles), R.S. 14:81.1 (pornography involving juveniles), R.S.  
 3                    14:81.3 (computer-aided solicitation of a minor), or R.S. 14:283 (video voyeurism)  
 4                    or have been convicted of a sex offense as defined in R.S. 15:541 in which the victim  
 5                    of the sex offense was a minor, R.S. 14:91.5, which prohibits such offenders from  
 6                    using certain social networking websites, is applicable. A copy of this statute is  
 7                    provided to you with this notification.

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

10                    \_\_\_\_\_

11                    Judge, \_\_\_\_ Judicial District Court

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

17                    \_\_\_\_\_

18                    (Name of Sex Offender)

19                    \_\_\_\_\_

20                    Defense Counsel Signature

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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)]

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 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 and R.S. 15:543.1)

#### Summary of Amendments Adopted by House

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

1. Deleted the word "previously" from provisions referencing the convictions of the sexual offender to whom proposed law applies.

#### Summary of Amendments Adopted by House

House Floor Amendments to the engrossed bill.

1. Made technical correction to the title.
2. Made technical changes to the sex offender notification form used by courts.