

Regular Session, 2010

HOUSE BILL NO. 290

BY REPRESENTATIVES TALBOT, ANDERS, ARNOLD, BOBBY BADON, BALDONE, BARRAS, BILLIOT, BROSSETT, BURFORD, HENRY BURNS, TIM BURNS, CHAMPAGNE, CHANEY, CONNICK, CROMER, DOERGE, DOVE, HARDY, HENDERSON, HENRY, HINES, HOFFMANN, HUTTER, JOHNSON, LABRUZZO, LAMBERT, LEGER, LORUSSO, LIGI, MILLS, MONICA, NOWLIN, PEARSON, PUGH, RICHARD, ROBIDEAUX, SCHRODER, SIMON, SMILEY, JANE SMITH, ST. GERMAIN, TEMPLET, THIERRY, WHITE, AND WILLIAMS AND SENATORS ALARIO, AMEDEE, APPEL, BROOME, CROWE, DUPLESSIS, HEITMEIER, KOSTELKA, LONG, MARTINY, MICHOT, MOUNT, SHAW, AND THOMPSON

CRIME/SEX OFFENSES: Provides with respect to pornography involving juveniles

1 AN ACT

2 To amend and reenact R.S. 14:81.1(A), (B), (C), and (E), relative to the crime of  
3 pornography involving juveniles; to provide for the elements of the crime; to provide  
4 for definitions; to provide for criminal penalties; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 14:81.1(A), (B), (C), and (E) are hereby amended and reenacted to  
7 read as follows:

8 §81.1. Pornography involving juveniles

9 A.(1) ~~Pornography involving juveniles is any of the following:~~ It shall be  
10 unlawful for a person to produce, distribute, possess, or possess with the intent to  
11 distribute pornography involving juveniles.

12 ~~(1) The photographing, videotaping, filming, or otherwise reproducing~~  
13 ~~visually of any sexual performance involving a child under the age of seventeen.~~

14 ~~(2) The solicitation, promotion, or coercion of any child under the age of~~  
15 ~~seventeen for the purpose of photographing, videotaping, filming, or otherwise~~

1        ~~reproducing visually any sexual performance involving a child under the age of~~  
2        ~~seventeen.~~

3                ~~(3) The intentional possession, sale, distribution, or possession with intent~~  
4        ~~to sell or distribute of any photographs, films, videotapes, or other visual~~  
5        ~~reproductions of any sexual performance involving a child under the age of~~  
6        ~~seventeen.~~

7                ~~(4)(2) It shall also be a violation of the provision of this Section for~~ The  
8        ~~consent of a parent, legal guardian, or custodian of a child under the age of seventeen~~  
9        ~~to consent to the participation of the child in pornography involving juveniles for the~~  
10       ~~purpose of photographing, videotaping, filming, or otherwise reproducing visually~~  
11       ~~any sexual performance involving the child.~~

12                B. For purposes of this Section, the following definitions shall apply:

13                (1) "Distribute" means to issue, sell, give, provide, lend, mail, deliver,  
14        transfer, transmute, distribute, circulate, or disseminate by any means.

15                (2) "Pornography involving juveniles" is any photograph, videotape, film,  
16        or other reproduction, whether electronic or otherwise, of any sexual performance  
17        involving a child under the age of seventeen.

18                (3) "Produce" means to photograph, videotape, film, or otherwise reproduce  
19        pornography involving juveniles, or to solicit, promote, or coerce any child for the  
20        purpose of pornography involving juveniles.

21                ~~(1)(4)~~ (4) "Sexual performance" means any performance or part thereof that  
22        includes sexual conduct involving a child under the age of seventeen actual or  
23        simulated sexual intercourse, deviate sexual intercourse, sexual bestiality,  
24        masturbation, sadomasochistic abuse, or lewd exhibition of the genitals or anus.

25                (2) ~~"Performance" means any play, motion picture, photograph, dance, or~~  
26        ~~other visual presentation.~~

27                (3) ~~"Sexual conduct" means actual or simulated sexual intercourse, deviate~~  
28        ~~sexual intercourse, sexual bestiality, masturbation, sadomasochistic abuse, or lewd~~  
29        ~~exhibition of the genitals.~~

1           ~~(4) "Promote" means to procure, manufacture, issue, sell, give, provide, lend,~~  
2           ~~mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, prevent,~~  
3           ~~exhibit, or advertise, or to offer or agree to do the same.~~

4           C.(1) Possession of three or more of the same photographs, images, films,  
5           videotapes, or other visual reproductions shall be prima facie evidence of intent to  
6           sell or distribute.

7           (2) Possession of three or more photographs, images, films, videotapes, or  
8           other visual reproductions and possession of any type of file sharing technology or  
9           software shall be prima facie evidence of intent to sell or distribute.

10   \*       \*       \*

11           E.(1) Whoever ~~commits the crime of~~ intentionally possesses pornography  
12           involving juveniles shall be fined not more than ten thousand dollars and shall be  
13           imprisoned at hard labor for not less than two years or more than ten years, without  
14           benefit of parole, probation, or suspension of sentence.

15           (2) Whoever distributes or possesses with the intent to distribute  
16           pornography involving juveniles shall be fined not more than ten thousand dollars  
17           and shall be imprisoned at hard labor for not less than five years or more than ten  
18           years, without benefit of parole, probation, or suspension of sentence.

19           (3) Any parent, legal guardian, or custodian of a child who consents to the  
20           participation of the child in pornography involving juveniles shall be fined not more  
21           than ten thousand dollars and be imprisoned at hard labor for not less than five years  
22           or more than twenty years, without benefit of probation, parole, or suspension of  
23           sentence.

24           (4) Whoever engages in the production of pornography involving juveniles  
25           shall be fined not more than fifteen thousand dollars and be imprisoned at hard labor  
26           for not less than ten years or more than twenty years, without benefit of probation,  
27           parole, or suspension of sentence.

28           ~~(2)(5)(a)~~ Whoever commits the crime of pornography involving juveniles by  
29           ~~violating the provisions of Paragraph (A)(2)~~ punishable by the provisions of

1        Paragraphs (1), (2), or (3) of this Section Subsection on a when the victim is under  
2        the age of thirteen years ~~when~~ and the offender is seventeen years of age or older  
3        shall be punished by imprisonment at hard labor for not less than ~~twenty-five years~~  
4        ~~nor more than ninety-nine years~~ one-half the longest term nor more than twice the  
5        longest term of imprisonment provided in Paragraphs (1), (2), and (3) of this  
6        Subsection. At least twenty-five years of the sentence imposed shall be served  
7        without benefit of parole, probation, or suspension of sentence. The sentence  
8        imposed shall be served without benefit of parole, probation, or suspension of  
9        sentence.

10            (b) Whoever commits the crime of pornography involving juveniles  
11        punishable by the provisions of Paragraph (4) of this Subsection when the victim is  
12        under the age of thirteen years, and the offender is seventeen years of age or older,  
13        shall be punished by imprisonment at hard labor for not less than twenty-five years  
14        nor more than ninety-nine years. At least twenty-five years of the sentence imposed  
15        shall be served without benefit of parole, probation, or suspension of sentence.

16            ~~(3)~~(c) Upon completion of the term of imprisonment imposed in accordance  
17        with ~~Paragraph (2)~~ Subparagraphs (5)(a) and (5)(b) of this Subsection, the offender  
18        shall be monitored by the Department of Public Safety and Corrections through the  
19        use of electronic monitoring equipment for the remainder of his natural life.

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

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



Proposed law amends the definition of "sexual performance", defines the terms "distribute", "pornography involving juveniles", and "produce", and deletes the definitions of "performance", "sexual conduct", and "promote".

Proposed law amends present law penalties of pornography involving juveniles as follows:

- (1) A maximum fine of \$10,000 and imprisonment at hard labor for two to 10 years for possession.
- (2) A maximum fine of \$10,000 and imprisonment at hard labor for five to 10 years for distribution or possession with the intent to distribute.
- (3) A maximum fine of \$10,000 and imprisonment at hard labor for five to 20 years for any parent, legal guardian, or custodian of a child who consents to the participation of the child in pornography involving juveniles.
- (4) A maximum fine of \$15,000 and imprisonment at hard labor for 10 to 20 years for the production of pornography involving juveniles.

Proposed law amends present law penalties when the victim is under the age of 13 as follows:

- (1) Imprisonment at hard labor for not less than 1/2 the longest term nor more than twice the longest term prescribed for committing the underlying crime of possessing, distributing, or possessing with the intent to distribute. The sentence imposed shall be served without benefit of parole, probation, or suspension of sentence.
- (2) Imprisonment at hard labor for 25 to 99 years, with at least 25 years served without benefit of probation, parole, or suspension of sentence, for the production of pornography involving juveniles.
- (3) Upon completion of the term of imprisonment imposed, the offender shall be electronically monitored by DPS&C for the remainder of his natural life.

(Amends R.S. 14:81.1(A), (B), (C), and (E))