

ACT No. 516

HOUSE BILL NO. 290

BY REPRESENTATIVES TALBOT, ANDERS, ARNOLD, AUSTIN BADON, BOBBY BADON, BALDONE, BARRAS, BILLIOT, BROSSETT, BURFORD, HENRY BURNS, TIM BURNS, CARMODY, CHAMPAGNE, CHANDLER, CHANEY, CONNICK, CROMER, DANAHAY, DOERGE, DOVE, DOWNS, FANNIN, GISCLAIR, GREENE, GUILLORY, GUINN, HARDY, HARRISON, HAZEL, HENDERSON, HENRY, HILL, HINES, HOFFMANN, HOWARD, HUTTER, JOHNSON, KATZ, LABRUZZO, LAFONTA, LAMBERT, LEGER, LIGI, LITTLE, LORUSSO, MILLS, MONICA, NORTON, NOWLIN, PEARSON, PUGH, RICHARD, RICHARDSON, ROBIDEAUX, SCHRODER, SIMON, SMILEY, GARY SMITH, JANE SMITH, ST. GERMAIN, TEMPLET, THIBAUT, THIERRY, TUCKER, WHITE, WILLIAMS, AND WILLMOTT AND SENATORS ALARIO, AMEDEE, APPEL, BROOME, CROWE, DUPLESSIS, HEITMEIER, KOSTELKA, LONG, MARTINY, MICHOT, MOUNT, SHAW, AND THOMPSON

1 AN ACT

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

6 Be it enacted by the Legislature of Louisiana:

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

9 §81.1. Pornography involving juveniles

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

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

15 ~~(2) The solicitation, promotion, or coercion of any child under the age of~~
16 ~~seventeen for the purpose of photographing, videotaping, filming, or otherwise~~
17 ~~reproducing visually any sexual performance involving a child under the age of~~
18 ~~seventeen.~~

19 ~~(3) The intentional possession, sale, distribution, or possession with intent~~
20 ~~to sell or distribute of any photographs, films, videotapes, or other visual~~

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

3 ~~(4)(2) It shall also be a violation of the provision of this Section for The~~
4 ~~consent of a parent, legal guardian, or custodian of a child under the age of seventeen~~
5 ~~to consent to the participation of the child in pornography involving juveniles for the~~
6 ~~purpose of photographing, videotaping, filming, or otherwise reproducing visually~~
7 ~~any sexual performance involving the child.~~

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

9 (1) "Access software provider" means a provider of software, including
10 client or server software, or enabling tools that do any one or more of the following:

11 (a) Filter, screen, allow, or disallow content.

12 (b) Select, choose, analyze, or digest content.

13 (c) Transmit, receive, display, forward, cache, search, organize, reorganize,
14 or translate content.

15 (2) "Cable operator" means any person or group of persons who provides
16 cable service over a cable system and directly, or through one or more affiliates,
17 owns a significant interest in such cable system, or who otherwise controls or is
18 responsible for, through any arrangement, the management and operation of such a
19 cable system.

20 (3) "Distribute" means to issue, sell, give, provide, lend, mail, deliver,
21 transfer, transmute, distribute, circulate, or disseminate by any means.

22 (4) "Interactive computer service" means any information service, system,
23 or access software provider that provides or enables computer access by multiple
24 users to a computer server, including a service or system that provides access to the
25 Internet and such systems operated or services offered by libraries or educational
26 institutions.

27 (5) "Pornography involving juveniles" is any photograph, videotape, film,
28 or other reproduction, whether electronic or otherwise, of any sexual performance
29 involving a child under the age of seventeen.

1 ~~(6)~~ "Produce" means to photograph, videotape, film, or otherwise reproduce
 2 pornography involving juveniles, or to solicit, promote, or coerce any child for the
 3 purpose of pornography involving juveniles.

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

8 (8) "Telecommunications service" means the offering of telecommunications
 9 for a fee directly to the public, regardless of the facilities used.

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

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

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

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

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

24 * * *

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

29 (2) Whoever distributes or possesses with the intent to distribute
 30 pornography involving juveniles shall be fined not more than ten thousand dollars

1 and shall be imprisoned at hard labor for not less than five years or more than ten
 2 years, without benefit of parole, probation, or suspension of sentence.

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

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

12 ~~(2)(5)(a)~~ Whoever commits the crime of pornography involving juveniles by
 13 ~~violating the provisions of Paragraph (A)(2) punishable by the provisions of~~
 14 Paragraphs (1), (2), or (3) of this Section Subsection on a when the victim is under
 15 the age of thirteen years when and the offender is seventeen years of age or older
 16 shall be punished by imprisonment at hard labor for not less than twenty-five years
 17 ~~nor more than ninety-nine years~~ one-half the longest term nor more than twice the
 18 longest term of imprisonment provided in Paragraphs (1), (2), and (3) of this
 19 Subsection. At least twenty-five years of the sentence imposed shall be served
 20 ~~without benefit of parole, probation, or suspension of sentence. The sentence~~
 21 imposed shall be served without benefit of parole, probation, or suspension of
 22 sentence.

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

29 ~~(3)(c)~~ Upon completion of the term of imprisonment imposed in accordance
 30 with Paragraph ~~(2)~~ Subparagraphs (5)(a) and (5)(b) of this Subsection, the offender

1 shall be monitored by the Department of Public Safety and Corrections through the
2 use of electronic monitoring equipment for the remainder of his natural life.

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

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

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

19 * * *

20 H. The provisions of this Section shall not apply to a provider of an
21 interactive computer service, provider of a telecommunications service, or a cable
22 operator as defined by the provisions of this Section.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

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