

2017 Regular Session

SENATE BILL NO. 41

BY SENATOR JOHNS

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

SEX OFFENSES. Provides for the forfeiture of currency related to the commission of certain sex offenses. (gov sig)

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AN ACT

To amend and reenact R.S. 14:46.2(B)(4), 46.3(D)(3), 81.1(E)(5)(c) and (d), 82.1(A), (D)(4), and (E), 83(B)(4), 83.1(B)(4), 83.2(B)(4), 84(B)(4), 85(B)(4), 86(B)(2) and (3), 104(B)(4), 105(B)(4), and 282(B)(4), and R.S. 15:539.1(A), (B)(1), (C), and (E) and 539.2(B)(1), relative to sex offenses; to provide for forfeiture of currency by persons convicted of certain sex offenses; to provide for the disposition and distribution of forfeited currency; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 14:46.2(B)(4), 46.3(D)(3), 81.1(E)(5)(c) and (d), 82.1(A), (D)(4), and (E), 83(B)(4), 83.1(B)(4), 83.2(B)(4), 84(B)(4), 85(B)(4), 86(B)(2) and (3), 104(B)(4), 105(B)(4), and 282(B)(4) are hereby amended and reenacted to read as follows:

§46.2. Human trafficking

\* \* \*  
B. \* \* \*  
\* \* \*

(4)(a) In addition, the court shall order that the personal property used in the commission of the offense, or the proceeds of any such conduct, shall be seized

1 and impounded, and after conviction, sold at public sale or public auction by the  
2 district attorney, **or otherwise distributed or disposed of,** in accordance with R.S.  
3 15:539.1.

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

10 \* \* \*

11 §46.3. Trafficking of children for sexual purposes

12 \* \* \*

13 D.

\* \* \*

14 \* \* \*

15 (3)(a) In addition, the court shall order that the personal property used in the  
16 commission of the offense, **or the proceeds of any such conduct,** shall be seized  
17 and impounded, and after conviction, sold at public sale or public auction by the  
18 district attorney, **or otherwise distributed or disposed of,** in accordance with R.S.  
19 15:539.1.

20 (b) The personal property made subject to seizure and sale pursuant to  
21 Subparagraph (a) of this Paragraph may include, but shall not be limited to,  
22 electronic communication devices, computers, computer related equipment, motor  
23 vehicles, photographic equipment used to record or create still or moving visual  
24 images of the victim that are recorded on paper, film, video tape, disc, or any other  
25 type of digital recording media, **and currency, instruments, or securities.**

26 \* \* \*

27 §81.1. Pornography involving juveniles

28 \* \* \*

29 E.

\* \* \*

1 \* \* \*

2 (5) \* \* \*

3 \* \* \*

4 (c) In addition, the court shall order that the personal property used in the  
5 commission of the offense, **or the proceeds of any such conduct,** shall be seized  
6 and impounded, and after conviction, sold at public sale or public auction by the  
7 district attorney, **or otherwise distributed or disposed of,** in accordance with R.S.  
8 15:539.1.

9 (d) The personal property made subject to seizure and sale pursuant to  
10 Subparagraph ~~(a)~~**(c)** of this Paragraph may include, but shall not be limited to,  
11 electronic communication devices, computers, computer related equipment, motor  
12 vehicles, photographic equipment used to record or create still or moving visual  
13 images of the victim that are recorded on paper, film, video tape, disc, or any other  
14 type of digital recording media, **and currency, instruments, or securities.**

15 \* \* \*

16 §82.1. Prostitution; persons under ~~eighteen~~ **twenty-one**; additional offenses

17 A. It shall be unlawful:

18 (1) For any person over the age of seventeen to engage in sexual intercourse  
19 with any person under the age of ~~eighteen~~ **twenty-one** who is practicing prostitution,  
20 and there is an age difference of greater than two years between the two persons.

21 (2) For any parent or tutor of any person under the age of ~~eighteen~~ **twenty-**  
22 **one** knowingly to consent to the person's entrance or detention in the practice of  
23 prostitution.

24 \* \* \*

25 D. \* \* \*

26 \* \* \*

27 (4)(a) In addition, the court shall order that the personal property used in the  
28 commission of the offense, **or the proceeds of any such conduct,** shall be seized  
29 and impounded, and after conviction, sold at public sale or public auction by the

1 district attorney, **or otherwise distributed or disposed of**, in accordance with R.S.  
2 15:539.1.

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

9 E. It shall not be a defense to prosecution for a violation of this Section that  
10 the person practicing prostitution who is believed to be under the age of ~~eighteen~~  
11 **twenty-one** is actually a law enforcement officer or peace officer acting within the  
12 official scope of his duties.

13 \* \* \*

14 §83. Soliciting for prostitutes

15 \* \* \*

16 B.

\* \* \*

17 \* \* \*

18 (4)(a) In addition, the court shall order that the personal property used in the  
19 commission of the offense, **or the proceeds of any such conduct**, shall be seized  
20 and impounded, and after conviction, sold at public sale or public auction by the  
21 district attorney, **or otherwise distributed or disposed of**, in accordance with R.S.  
22 15:539.1.

23 (b) The personal property made subject to seizure and sale pursuant to  
24 Subparagraph (a) of this Paragraph may include, but shall not be limited to,  
25 electronic communication devices, computers, computer related equipment, motor  
26 vehicles, photographic equipment used to record or create still or moving visual  
27 images of the victim that are recorded on paper, film, video tape, disc, or any other  
28 type of digital recording media, **and currency, instruments, or securities**.

29 §83.1. Inciting prostitution

1 \* \* \*

2 B. \* \* \*

3 \* \* \*

4 (4)(a) In addition, the court shall order that the personal property used in the  
5 commission of the offense, or the proceeds of any such conduct, shall be seized  
6 and impounded, and after conviction, sold at public sale or public auction by the  
7 district attorney, or otherwise distributed or disposed of, in accordance with R.S.  
8 15:539.1.

9 (b) The personal property made subject to seizure and sale pursuant to  
10 Subparagraph (a) of this Paragraph may include, but shall not be limited to,  
11 electronic communication devices, computers, computer related equipment, motor  
12 vehicles, photographic equipment used to record or create still or moving visual  
13 images of the victim that are recorded on paper, film, video tape, disc, or any other  
14 type of digital recording media, and currency, instruments, or securities.

15 §83.2. Promoting prostitution

16 \* \* \*

17 B. \* \* \*

18 \* \* \*

19 (4)(a) In addition, the court shall order that the personal property used in the  
20 commission of the offense, or the proceeds of any such conduct, shall be seized  
21 and impounded, and after conviction, sold at public sale or public auction by the  
22 district attorney, or otherwise distributed or disposed of, in accordance with R.S.  
23 15:539.1.

24 (b) The personal property made subject to seizure and sale pursuant to  
25 Subparagraph (a) of this Paragraph may include, but shall not be limited to,  
26 electronic communication devices, computers, computer related equipment, motor  
27 vehicles, photographic equipment used to record or create still or moving visual  
28 images of the victim that are recorded on paper, film, video tape, disc, or any other  
29 type of digital recording media, and currency, instruments, or securities.

1 \* \* \*

2 §84. Pandering

3 \* \* \*

4 B. \* \* \*

5 \* \* \*

6 (4)(a) In addition, the court shall order that the personal property used in the  
7 commission of the offense, **or the proceeds of any such conduct,** shall be seized  
8 and impounded, and after conviction, sold at public sale or public auction by the  
9 district attorney, **or otherwise distributed or disposed of,** in accordance with R.S.  
10 15:539.1.

11 (b) The personal property made subject to seizure and sale pursuant to  
12 Subparagraph (a) of this Paragraph may include, but shall not be limited to,  
13 electronic communication devices, computers, computer related equipment, motor  
14 vehicles, photographic equipment used to record or create still or moving visual  
15 images of the victim that are recorded on paper, film, video tape, disc, or any other  
16 type of digital recording media, **and currency, instruments, or securities.**

17 §85. Letting premises for prostitution

18 \* \* \*

19 B. \* \* \*

20 \* \* \*

21 (4)(a) In addition, the court shall order that the personal property used in the  
22 commission of the offense, **or the proceeds of any such conduct,** shall be seized  
23 and impounded, and after conviction, sold at public sale or public auction by the  
24 district attorney, **or otherwise distributed or disposed of,** in accordance with R.S.  
25 15:539.1.

26 (b) The personal property made subject to seizure and sale pursuant to  
27 Subparagraph (a) of this Paragraph may include, but shall not be limited to,  
28 electronic communication devices, computers, computer related equipment, motor  
29 vehicles, photographic equipment used to record or create still or moving visual

1 images of the victim that are recorded on paper, film, video tape, disc, or any other  
2 type of digital recording media, **and currency, instruments, or securities.**

3 §86. Enticing persons into prostitution

4 \* \* \*

5 B. \* \* \*

6 \* \* \*

7 (2) In addition, the court shall order that the personal property used in the  
8 commission of the offense, **or the proceeds of any such conduct**, shall be seized  
9 and impounded, and after conviction, sold at public sale or public auction by the  
10 district attorney, **or otherwise distributed or disposed of**, in accordance with R.S.  
11 15:539.1.

12 (3) The personal property made subject to seizure and sale pursuant to  
13 ~~Subparagraph (a) of this Paragraph~~ **Paragraph (2) of this Subsection** may include,  
14 but shall not be limited to, electronic communication devices, computers, computer  
15 related equipment, motor vehicles, photographic equipment used to record or create  
16 still or moving visual images of the victim that are recorded on paper, film, video  
17 tape, disc, or any other type of digital recording media, **and currency, instruments,**  
18 **or securities.**

19 \* \* \*

20 §104. Keeping a disorderly place

21 \* \* \*

22 B. \* \* \*

23 \* \* \*

24 (4)(a) In addition, the court shall order that the personal property used in the  
25 commission of the offense, **or the proceeds of any such conduct**, shall be seized  
26 and impounded, and after conviction, sold at public sale or public auction by the  
27 district attorney, **or otherwise distributed or disposed of**, in accordance with R.S.  
28 15:539.1.

29 (b) The personal property made subject to seizure and sale pursuant to

1 Subparagraph (a) of this Paragraph may include, but shall not be limited to,  
 2 electronic communication devices, computers, computer related equipment, motor  
 3 vehicles, photographic equipment used to record or create still or moving visual  
 4 images of the victim that are recorded on paper, film, video tape, disc, or any other  
 5 type of digital recording media, **and currency, instruments, or securities.**

6 §105. Letting a disorderly place

7 \* \* \*

8 B. \* \* \*

9 \* \* \*

10 (4)(a) In addition, the court shall order that the personal property used in the  
 11 commission of the offense, **or the proceeds of any such conduct,** shall be seized  
 12 and impounded, and after conviction, sold at public sale or public auction by the  
 13 district attorney, **or otherwise distributed or disposed of,** in accordance with R.S.  
 14 15:539.1.

15 (b) The personal property made subject to seizure and sale pursuant to  
 16 Subparagraph (a) of this Paragraph may include, but shall not be limited to,  
 17 electronic communication devices, computers, computer related equipment, motor  
 18 vehicles, photographic equipment used to record or create still or moving visual  
 19 images of the victim that are recorded on paper, film, video tape, disc, or any other  
 20 type of digital recording media, **and currency, instruments, or securities.**

21 \* \* \*

22 §282. Operation of places of prostitution prohibited; penalty

23 \* \* \*

24 B. \* \* \*

25 \* \* \*

26 (4)(a) In addition, the court shall order that the personal property used in the  
 27 commission of the offense, **or the proceeds of any such conduct,** shall be seized  
 28 and impounded, and after conviction, sold at public sale or public auction by the  
 29 district attorney, **or otherwise distributed or disposed of,** in accordance with R.S.

1 15:539.1.

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

8 Section 2. R.S. 15:539.1(A), (B)(1), (C), and (E) and 539.2(B)(1) are hereby  
9 amended and reenacted to read as follows:

10 §539.1. Forfeited property related to certain sex crimes; exempt property; allocation  
11 of forfeited property

12 A. When personal property is forfeited under the provisions of R.S. 14:40.3  
13 (cyberstalking), R.S. 14:46.2 (human trafficking), R.S. 14:46.3 (trafficking of  
14 children for sexual purposes), R.S. 14:80 (felony carnal knowledge of a juvenile),  
15 R.S. 14:81 (indecent behavior with juveniles), R.S. 14:81.1 (pornography involving  
16 juveniles), R.S. 14:81.2 (molestation of a juvenile or a person with a physical or  
17 mental disability), R.S. 14:81.3 (computer-aided solicitation of a minor), R.S.  
18 14:82.1 (prostitution; persons under ~~eighteen~~ **twenty-one**; additional offenses), R.S.  
19 14:83 (soliciting for prostitutes), R.S. 14:83.1 (inciting prostitution), R.S. 14:83.2  
20 (promoting prostitution), R.S. 14:84 (pandering), R.S. 14:85 (letting premises for  
21 prostitution), R.S. 14:86 (enticing persons into prostitution), R.S. 14:104 (keeping  
22 a disorderly place), R.S. 14:105 (letting a disorderly place), and R.S. 14:282  
23 (operation of places of prostitution; prohibited; penalty), the district attorney shall  
24 authorize a public sale or a public auction conducted by a licensed auctioneer,  
25 without appraisal, of that which is not required by law to be destroyed and which is  
26 not harmful to the public. **Any currency, instruments, or securities forfeited shall**  
27 **be distributed or disposed of as provided in this Section.**

28 B.(1) The personal property shall be exempt from sale **and the currency,**  
29 **instruments, or securities shall be exempt from distribution or disposition** if it

1 was stolen or if the possessor of the property was not the owner and the owner did  
 2 not know that the personal property was being used in the commission of the crime.  
 3 If this exemption is applicable, the personal property shall not be released until such  
 4 time as all applicable fees related to its seizure and storage are paid. An Internet  
 5 service provider shall not be required to pay seizure or storage fees to secure the  
 6 release of equipment leased to an offender.

7 \* \* \*

8 C. In addition, the personal property shall be exempt from sale and the  
 9 currency, instruments, or securities shall be exempt from distribution or  
 10 disposition if it is subject to a lien recorded prior to the date of the offense and if the  
 11 applicable fees related to the property's seizure and storage are paid by a valid lien  
 12 holder.

13 \* \* \*

14 E. Notwithstanding Subsection D of this Section, when the currency,  
 15 instruments, securities, or other property is forfeited pursuant to the provisions of  
 16 R.S. 14:46.2 (human trafficking), R.S. 14:46.3 (trafficking of children for sexual  
 17 purposes), R.S. 14:81.1 (pornography involving juveniles), R.S. 14:81.3 (computer-  
 18 aided solicitation of a minor), R.S. 14:82.1 (prostitution; persons under ~~eighteen~~  
 19 twenty-one; additional offenses), R.S. 14:83 (soliciting for prostitutes), R.S. 14:83.1  
 20 (inciting prostitution), R.S. 14:83.2 (promoting prostitution), R.S. 14:84 (pandering),  
 21 R.S. 14:85 (letting premises for prostitution), R.S. 14:86 (enticing persons into  
 22 prostitution), R.S. 14:104 (keeping a disorderly place), R.S. 14:105 (letting a  
 23 disorderly place), and R.S. 14:282 (operation of places of prostitution), the currency,  
 24 instruments, and securities and proceeds of the public sale or public auction shall  
 25 be applied first to any restitution granted to the victim, after the costs of the public  
 26 sale or auction, court costs, and fees related to seizure and storage have been  
 27 satisfied. Any remaining currency, instruments, securities, or proceeds shall be  
 28 distributed in the following manner:

29 (1) Twenty-five percent to the seizing agency or agencies allocated among

1 the seizing agencies in proportion to their participation in the management of the  
2 investigation, seizure, and forfeiture.

3 (2) Twenty-five percent to the prosecuting agency.

4 (3) Fifty percent to the Exploited Children's Special Fund pursuant to R.S.  
5 15:539.2.

6 §539.2. Exploited Children's Special Fund

7 \* \* \*

8 B.(1) There is established in the state treasury the Exploited Children's  
9 Special Fund, hereinafter referred to as the "fund". Appropriations by the legislature  
10 and all monetary assessments paid and interest accrued on funds collected pursuant  
11 to Subsection A of this Section shall be deposited into the Bond Security and  
12 Redemption Fund, and after a sufficient amount is allocated from the Bond Security  
13 and Redemption Fund to pay all the obligations secured by the full faith and credit  
14 of the state which become due and payable within any fiscal year, the treasurer shall  
15 pay the remainder of such monies into the fund. **The fund shall be subject to public**  
16 **audit.**

17 \* \* \*

18 Section 3. This Act shall become effective upon signature by the governor or, if not  
19 signed by the governor, upon expiration of the time for bills to become law without signature  
20 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
21 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
22 effective on the day following such approval.

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The original instrument was prepared by Alden A. Clement, Jr. The following digest, which does not constitute a part of the legislative instrument, was prepared by Linda Nugent.

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DIGEST

SB 41 Reengrossed 2017 Regular Session Johns

Present law provides, in addition to any other penalties, for the forfeiture of certain personal property used in the commission of certain sex offenses, including prostitution involving person under 18. Present law further provides that the personal property made subject to seizure and sale pursuant to present law may include but is not limited to electronic communication devices, computers, computer related equipment, motor vehicles, photographic equipment used to record or create still or moving visual images of the victim

that are recorded on paper, film, video tape, disc, or any other type of digital recording media.

Proposed law changes the offense of "prostitution involving persons under 18" to "prostitution involving persons under 21."

Proposed law further adds that, with regard to the crimes of human trafficking, trafficking of children for sexual purposes, pornography involving juveniles, prostitution involving persons under 21, soliciting for prostitutes, inciting prostitution, promoting prostitution, pandering, letting premises for prostitution, enticing persons into prostitution, keeping a disorderly place, letting a disorderly place, and operation of places of prostitution, the proceeds of such conduct are subject to forfeiture, including currency, instruments, or securities.

Proposed law otherwise retains present law.

Present law provides that the district attorney is to authorize a public sale or a public auction conducted by a licensed auctioneer, without appraisal, of any forfeited personal property that is not required by present law to be destroyed and that is not harmful to the public.

Proposed law retains present law and adds that any currency, instruments, or securities forfeited are to be distributed or disposed of as provided in proposed law.

Present law provides that personal property is exempt from sale if it was stolen or if the possessor of the property was not the owner and the owner did not know that the personal property was being used in the commission of the crime. Present law further provides that if this exemption is applicable, the personal property is not to be released until such time as all applicable fees related to its seizure and storage are paid.

Proposed law retains present law and adds forfeited currency, instruments, and securities to this exemption.

Present law provides that personal property is exempt from sale if it is subject to a lien recorded prior to the date of the offense and if the applicable fees related to the property's seizure and storage are paid by a valid lien holder.

Proposed law retains present law and adds forfeited currency, instruments, and securities to this exemption.

Present law provides that the proceeds of the public sale or public auction are to be used to pay the costs of the public sale or public auction, court costs, and fees related to the seizure and storage of the personal property, and any proceeds remaining are to be distributed by the district attorney in the following manner:

- (1) 60% to the seizing agency or agencies in an equitable manner.
- (2) 20% to the prosecuting agency.
- (3) 20% to the criminal court fund of the parish in which the offender was prosecuted.

Present law provides that when the property is forfeited pursuant to the penalty provisions for the crimes of human trafficking, trafficking of children for sexual purposes, pornography involving juveniles, computer-aided solicitation of a minor, prostitution involving persons under 21, soliciting for prostitutes, inciting prostitution, promoting prostitution, pandering, letting premises for prostitution, enticing persons into prostitution, keeping a disorderly place, letting a disorderly place, and operation of places of prostitution, the proceeds of the public sale or public auction are to be applied first to any restitution granted to the victim, after the costs of the public sale or auction, court costs, and fees related to seizure and

storage have been satisfied. Present law further provides that any remaining proceeds are to be distributed in the following manner:

- (1) 25% to the seizing agency or agencies allocated among the seizing agencies in proportion to their participation in the management of the investigation, seizure, and forfeiture.
- (2) 25% to the prosecuting agency.
- (3) 50% to the Exploited Children's Special Fund.

Proposed law retains present law and adds currency, instruments, or securities to the items that are to be distributed pursuant to present law.

Present law provides relative to the Exploited Children's Special Fund.

Proposed law retains present law and makes the fund subject to public audit.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 14:46.2(B)(4), 46.3(D)(3), 81.1(E)(5)(c) and (d), 82.1(A), (D)(4), and (E), 83(B)(4), 83.1(B)(4), 83.2(B)(4), 84(B)(4), 85(B)(4), 86(B)(2) and (3), 104(B)(4), 105(B)(4), and 282(B)(4), and R.S. 15:539.1(A), (B)(1), (C), and (E) and 539.2(B)(1))

#### Summary of Amendments Adopted by Senate

##### Committee Amendments Proposed by Senate Committee on Judiciary C to the original bill

1. Change the offense of "prostitution involving persons under 18" to "prostitution involving persons under 21".
2. Delete provisions of proposed law relative to distribution of forfeited currency, instruments, or securities to a Special Asset Forfeiture Fund created by proposed law.
3. Make Exploited Children's Special Fund subject to public audit.

#### Summary of Amendments Adopted by Senate

##### Senate Floor Amendments to engrossed bill

1. Legislative Bureau technical amendments.