

2018 Regular Session

HOUSE BILL NO. 79

BY REPRESENTATIVES MACK, AMEDEE, BACALA, BAGLEY, BRASS, CHAD BROWN, TERRY BROWN, CARPENTER, COX, CREWS, EDMONDS, FOIL, GISCLAIR, GLOVER, JIMMY HARRIS, LANCE HARRIS, HAVARD, HAZEL, HENRY, HENSGENS, HODGES, HORTON, HUNTER, JACKSON, LYONS, MARCELLE, MIGUEZ, JAY MORRIS, NORTON, PYLANT, RICHARD, SCHEXNAYDER, STAGNI, STOKES, TALBOT, WRIGHT, AND ZERINGUE

CRIME: Creates the crime of abuse of persons with infirmities through electronic means and provides for criminal penalties and exceptions

1 AN ACT

2 To enact R.S. 14:283.3, relative to abuse of persons with infirmities; to create the crime of
3 abuse of persons with infirmities through electronic means; to provide for
4 exceptions; to provide for penalties; to provide for definitions; and to provide for
5 related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 14:283.3 is hereby enacted to read as follows:

8 §283.3. Abuse of persons with infirmities through electronic means

9 A. A person commits the crime of abuse of persons with infirmities through
10 electronic means when all of the following occur:

11 (1) The person transfers an image that was obtained by any camera,
12 videotape, photo-optical, photo-electric, unmanned aircraft system, or any other
13 image recording device and that was obtained for the purpose of observing, viewing,
14 photographing, filming, or videotaping any person with an infirmity.

15 (2) The person transfers the image by live or recorded telephone message,
16 electronic mail, the internet, or a commercial online service.

1 (3) The person transfers the image with the malicious and willful intent to
2 embarrass, shame, harass, coerce, abuse, torment, or intimidate, regardless of
3 whether the victim has knowledge of the transfer.

4 B. For purposes of this Section:

5 (1) "Person with an infirmity means a person who suffers from a mental or
6 physical disability, including those associated with advanced age, which renders the
7 person incapable of adequately providing for his personal care. A person with an
8 infirmity may include but is not limited to a person who is a resident of a nursing
9 home, facility for persons with intellectual disabilities, mental health facility,
10 hospital, or other residential facility or recipients of home and community-based
11 care.

12 (2) "Unmanned aircraft system" means an unmanned, powered aircraft that
13 does not carry a human operator, can be autonomous or remotely piloted or operated,
14 and can be expendable or recoverable.

15 C.(1) Whoever commits the crime of abuse of persons with infirmities
16 through electronic means shall, upon a first conviction thereof, be fined not more
17 than one thousand dollars or imprisoned for not more than six months, or both.

18 (2) On a second or subsequent conviction, the offender shall be fined not
19 more than two thousand dollars and imprisoned at hard labor for not less than one
20 year nor more than three years without benefit of parole, probation, or suspension of
21 sentence.

22 D. The provisions of this Section shall not apply to the transference of such
23 images by a telephone company, television broadcast licensee of the Federal
24 Communications Commission, cable television company, or any of its affiliates, an
25 internet provider, or commercial online service provider, or to the carrying,
26 broadcasting, or performing of related activities in providing telephone, over-the-air
27 television, cable television, internet, or commercial online services.

- 1 E. The provisions of this Section shall not apply to any healthcare provider
 2 through its use of any of its cameras, videotape, photo-optical, photo-electric,
 3 unmanned aircraft system, or any other image recording device within the facility.
- 4 F. Any evidence resulting from the commission of abuse of persons with
 5 infirmities through electronic means shall be contraband.

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)]

HB 79 Reengrossed

2018 Regular Session

Mack

Abstract: Creates the crime of abuse of persons with infirmities through electronic means and provides for criminal penalties, exceptions to the offense, and definitions.

Proposed law creates the crime of abuse of persons with infirmities through electronic means and provides that the offense is committed when all of the following occur:

- (1) The person transfers an image that was obtained by any camera, videotape, photo-optical, photo-electric, unmanned aircraft system, or any other image recording device and that was obtained for the purpose of observing, viewing, photographing, filming, or videotaping any person with an infirmity.
- (2) The person transfers the image by live or recorded telephone message, electronic mail, the internet, or a commercial online service.
- (3) The person transfers the image with the malicious and willful intent to embarrass, shame, harass, coerce, abuse, torment, or intimidate, regardless of whether the victim has knowledge of the transfer.

Proposed law defines "person with an infirmity" as a person who suffers from a mental or physical disability, including those associated with advanced age, which renders the person incapable of adequately providing for his personal care. Further provides that a person with an infirmity may include but is not limited to a person who is a resident of a nursing home, facility for persons with intellectual disabilities, mental health facility, hospital, or other residential facility or recipients of home and community-based care.

Proposed law provides for the following penalties:

- (1) First offense conviction - a fine of not more than \$1,000, imprisonment for up to six months, or both.
- (2) Second or subsequent offense conviction - a fine of not more than \$2,000, and imprisonment at hard labor for one to three years, without benefit of parole, probation, or suspension of sentence.

Proposed law provides an exception to this offense for a telephone company, television company, cable television company, or any of its affiliates, an internet provider, or commercial online service provider, or to the carrying, broadcasting, or performing of related activities in providing telephone, cable television, over-the-air television, internet, or commercial online services. Further provides an exception for any healthcare provider

through its use of any of its cameras, videotape, photo-optical, photo-electric, unmanned aircraft system, or any other image recording device within the facility.

Proposed law provides that any evidence resulting from the commission of abuse of persons with infirmities through electronic means shall be contraband.

(Adds R.S. 14:283.3)

Summary of Amendments Adopted by House

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

1. Modify the elements of the offense to specify that a person commits the crime of abuse of persons with infirmities through electronic means when the person transfers an image obtained by specified means and for specified purposes set forth in proposed law, when the person transfers the image by specified means set forth in proposed law, and when the person transfers the image with specific intent set forth in proposed law.
2. Add a definition for "person with an infirmity".
3. Add an exception to the offense for any healthcare provider through its use of any cameras, videotape, photo-optical, photo-electric, unmanned aircraft system, or any other image recording device within the facility.

The House Floor Amendments to the engrossed bill:

1. Add to the exception television broadcast licensees of the Federal Communications Commission and carrying, broadcasting, or performing of related activities in providing over-the-air television.
2. Make a technical change placing the terms defined for purposes of proposed law into one Subsection.