

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(D)(4), 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), the introductory paragraph of (D), and (E), and to enact R.S. 15:539.1(F), 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(D)(4), 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

1 commission of the offense, **or the proceeds of any such conduct**, shall be seized
2 and impounded, and after conviction, sold at public sale or public auction by the
3 district attorney, **or otherwise distributed or disposed of**, in accordance with R.S.
4 15:539.1.

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

11 * * *

12 §46.3. Trafficking of children for sexual purposes

13 * * *

14 D. * * *

15 * * *

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

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

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28 §81.1. Pornography involving juveniles

29 * * *

1 E. * * *

2 * * *

3 (5) * * *

4 * * *

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

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

16 * * *

17 §82.1. Prostitution; persons under eighteen; additional offenses

18 * * *

19 D. * * *

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 * * *

4 §83. Soliciting for prostitutes

5 * * *

6 B. * * *

7 * * *

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

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

19 §83.1. Inciting prostitution

20 * * *

21 B. * * *

22 * * *

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

28 (b) The personal property made subject to seizure and sale pursuant to
29 Subparagraph (a) of this Paragraph may include, but shall not be limited to,

1 electronic communication devices, computers, computer related equipment, motor
2 vehicles, photographic equipment used to record or create still or moving visual
3 images of the victim that are recorded on paper, film, video tape, disc, or any other
4 type of digital recording media, **and currency, instruments, or securities.**

5 §83.2. Promoting prostitution

6 * * *

7 B. * * *

8 * * *

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

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

20 * * *

21 §84. Pandering

22 * * *

23 B. * * *

24 * * *

25 (4)(a) In addition, the court shall order that the personal property used in the
26 commission of the offense, **or the proceeds of any such conduct,** shall be seized
27 and impounded, and after conviction, sold at public sale or public auction by the
28 district attorney, **or otherwise distributed or disposed of,** in accordance with R.S.
29 15:539.1.

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

7 §85. Letting premises for prostitution

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

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

22 §86. Enticing persons into prostitution

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24	B.	*	*	*
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26 (2) 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 (3) 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.**

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9 §104. Keeping a disorderly place

10 * * *

11 B. * * *

12 * * *

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

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

24 §105. Letting a disorderly place

25 * * *

26 B. * * *

27 * * *

28 (4)(a) In addition, the court shall order that the personal property used in the
29 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 §282. Operation of places of prostitution prohibited; penalty

12 * * *

13 B.

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14 * * *

15 (4)(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 Section 2. R.S. 15:539.1(A), (B)(1), (C), the introductory paragraph of (D), and (E)
27 are hereby amended and reenacted and R.S. 15:539.1(F) is hereby enacted to read as follows:

28 §539.1. Forfeited property related to certain sex crimes; exempt property; allocation
29 of forfeited property

1 holder.

2 D. The Except as provided in Subsections E and F of this Section, the
3 proceeds of the public sale or public auction shall pay the costs of the public sale or
4 public auction, court costs, and fees related to the seizure and storage of the personal
5 property. Any proceeds remaining shall be distributed by the district attorney in the
6 following manner:

7 (1) Sixty percent to the seizing agency or agencies in an equitable manner.

8 (2) Twenty percent to the prosecuting agency.

9 (3) Twenty percent to the criminal court fund of the parish in which the
10 offender was prosecuted.

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

25 (1) Twenty-five percent to the seizing agency or agencies allocated among
26 the seizing agencies in proportion to their participation in the management of the
27 investigation, seizure, and forfeiture.

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

29 (3) Fifty percent to the Exploited Children's Special Fund pursuant to R.S.

1 15:539.2.

2 F. A Special Asset Forfeiture Fund is hereby established within the
3 Special District Attorney Asset Forfeiture Trust Fund. Any forfeited currency,
4 instruments, or securities obtained under the provisions of this Section shall be
5 deposited in the fund. The court shall ensure the equitable distribution of the
6 fund under and subject to the provisions of this Subsection to the appropriate
7 local, state, or federal law enforcement agency so as to generally reflect the
8 contribution of that agency's participation in any of the activity that led to the
9 seizure or forfeiture of the currency, instruments, or securities under and
10 subject to the provisions of this Subsection. The office of the district attorney
11 shall administer expenditures from the fund. The fund is subject to public audit.
12 The fund shall be distributed in the following order of priority:

13 (1) For satisfaction of any bona fide security interest or lien.

14 (2) Thereafter, for payment of all proper expenses of the proceedings for
15 forfeiture and sale, including expenses of seizure, maintenance of custody,
16 advertising, and court costs.

17 (3) The remaining funds shall be allocated as follows:

18 (a) Sixty percent to the law enforcement agency or agencies making the
19 seizure, such proceeds to be used in human trafficking enforcement, including
20 but not limited to reward programs established by such agencies.

21 (b) Twenty percent to the criminal court fund.

22 (c) Twenty percent to any district attorney's office that employs the
23 attorneys that handle the forfeiture action for the state. This shall be paid into
24 the district attorney's twelve percent fund to be used for public purposes,
25 including but not limited to use for prosecution, rewards, support, and
26 continuing legal education in furtherance of this Chapter, and in regard to
27 Chapter 4 of Title 40 of the Louisiana Revised Statutes of 1950.

28 Section 3. This Act shall become effective upon signature by the governor or, if not
29 signed by the governor, upon expiration of the time for bills to become law without signature

1 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 2 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 3 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part
 of the legislative instrument, were prepared by Alden A. Clement Jr.

DIGEST

SB 41 Original

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. Present law further provides that the personal property made subject to seizure and sale pursuant to present law may include, but is not be 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 retains present law and adds that, with regard to the crimes of human trafficking, trafficking of children for sexual purposes, pornography involving juveniles, prostitution involving persons under eighteen, 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.

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 eighteen, 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 that, notwithstanding the foregoing provisions of present law, any forfeited currency, instruments, or securities obtained under the provisions of proposed law are to be deposited in a Special Asset Forfeiture Fund that is to be established within the Special District Attorney Asset Forfeiture Trust Fund provided for in present law. Proposed law further provides that the court is to ensure the equitable distribution of the fund under and subject to the provisions of proposed law to the appropriate local, state, or federal law enforcement agency so as to reflect generally the contribution of that agency's participation in any of the activity that led to the seizure or forfeiture of the currency, instruments, or securities. Proposed law further provides that the office of the district attorney is to administer expenditures from the fund. Proposed law further provides that the fund is subject to public audit.

Proposed law provides that the Special Asset Forfeiture Fund is to be distributed in the following order of priority:

- (1) For satisfaction of any bona fide security interest or lien.
- (2) Thereafter, for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs.
- (3) The remaining funds are to be allocated as follows:
 - (a) 60% to the law enforcement agency or agencies making the seizure, such proceeds to be used in human trafficking enforcement, including but not limited to reward programs established by such agencies.
 - (b) 20% to the criminal court fund.
 - (c) 20% to any district attorney's office employing the attorneys that handle the forfeiture action for the state, which is to be paid into the district attorney's 12% fund to be used for public purposes including, but not limited to use for prosecution, rewards, support, and continuing legal education.

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(D)(4), 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), (D)(intro para), and (E); adds R.S. 15:539.1(F))