

2022 Regular Session

HOUSE BILL NO. 634

BY REPRESENTATIVE MCMAHEN

CRIME: Provides relative to offenses against minors

1 AN ACT

2 To amend and reenact R.S. 14:43.1(A)(3)(introductory paragraph) and (C)(2), 43.2(C)(2)
3 and (3)(introductory paragraph), 80(A)(1), 80.1(A), 81.1(E)(5)(a) and (b) and
4 (G)(introductory paragraph), 81.2(A)(1) and (2)(introductory paragraph), (B)(1), (2),
5 and (3)(a), 81.3(A)(1), (2), (3), and (5), (B)(1)(a) and (c) and (C)(1), 91.13(A),
6 92(A)(introductory paragraph), 93(A), 93.2.3(A)(1), and 283(A)(3), relative to
7 offenses against minors; to provide relative to the age of offenders; to raise the age
8 of offenders to eighteen in certain offenses; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 14:43.1(A)(3)(introductory paragraph) and (C)(2), 43.2(C)(2) and
11 (3)(introductory paragraph), 80(A)(1), 80.1(A), 81.1(E)(5)(a) and (b) and (G)(introductory
12 paragraph), 81.2(A)(1) and (2)(introductory paragraph), (B)(1), (2), and (3)(a), 81.3(A)(1),
13 (2), (3), and (5), (B)(1)(a) and (c) and (C)(1), 91.13(A), 92(A)(introductory paragraph),
14 93(A), 93.2.3(A)(1), and 283(A)(3) are hereby amended and reenacted to read as follows:

15 §43.1. Sexual battery

16 A. Sexual battery is the intentional touching of the anus or genitals of the
17 victim by the offender using any instrumentality or any part of the body of the
18 offender, directly or through clothing, or the touching of the anus or genitals of the
19 offender by the victim using any instrumentality or any part of the body of the
20 victim, directly or through clothing, when any of the following occur:

21 * * *

1 (3) The offender is ~~seventeen~~ eighteen years of age or older and any of the
2 following exist:

3 * * *

4 C.

5 * * *

6 (2) Whoever commits the crime of sexual battery on a victim under the age
7 of thirteen years when the offender is ~~seventeen~~ eighteen years of age or older shall
8 be punished by imprisonment at hard labor for not less than twenty-five years nor
9 more than ninety-nine years. At least twenty-five years of the sentence imposed
10 shall be served without benefit of parole, probation, or suspension of sentence.

11 * * *

12 §43.2. Second degree sexual battery

13 * * *

14 C.

15 * * *

16 (2) Whoever commits the crime of second degree sexual battery on a victim
17 under the age of thirteen years when the offender is ~~seventeen~~ eighteen years of age
18 or older shall be punished by imprisonment at hard labor for not less than twenty-five
19 years nor more than ninety-nine years. At least twenty-five years of the sentence
20 imposed shall be served without benefit of parole, probation, or suspension of
21 sentence.

22 (3) Any person who is ~~seventeen~~ eighteen years of age or older who commits
23 the crime of second degree sexual battery shall be punished by imprisonment at hard
24 labor for not less than twenty-five nor more than ninety-nine years, at least twenty-
25 five years of the sentence imposed being served without benefit of parole, probation,
26 or suspension of sentence, when any of the following conditions exist:

27 * * *

28 §80. Felony carnal knowledge of a juvenile

29 A. Felony carnal knowledge of a juvenile is committed when:

1 (1) A person who is ~~seventeen~~ eighteen years of age or older has sexual
 2 intercourse, with consent, with a person who is thirteen years of age or older but less
 3 than ~~seventeen~~ eighteen years of age, when the victim is not the spouse of the
 4 offender and when the difference between the age of the victim and the age of the
 5 offender is four years or greater; or

6 * * *

7 §80.1. Misdemeanor carnal knowledge of a juvenile

8 A. Misdemeanor carnal knowledge of a juvenile is committed when a person
 9 who is ~~seventeen~~ eighteen years of age or older has sexual intercourse, with consent,
 10 with a person who is thirteen years of age or older but less than ~~seventeen~~ eighteen
 11 years of age, when the victim is not the spouse of the offender, and when the
 12 difference between the age of the victim and age of the offender is greater than two
 13 years, but less than four years.

14 * * *

15 §81.1. Pornography involving juveniles

16 * * *

17 E.

18 * * *

19 (5)(a) Whoever commits the crime of pornography involving juveniles
 20 punishable by the provisions of Paragraph (1), (2), or (3) of this Subsection when the
 21 victim is under the age of thirteen years and the offender is ~~seventeen~~ eighteen years
 22 of age or older shall be punished by imprisonment at hard labor for not less than
 23 one-half the longest term nor more than twice the longest term of imprisonment
 24 provided in Paragraphs (1), (2), and (3) of this Subsection. The sentence imposed
 25 shall be served without benefit of parole, probation, or suspension of sentence.

26 (b) Whoever commits the crime of pornography involving juveniles
 27 punishable by the provisions of Paragraph (4) of this Subsection when the victim is
 28 under the age of thirteen years, and the offender is ~~seventeen~~ eighteen years of age
 29 or older, shall be punished by imprisonment at hard labor for not less than twenty-

1 five years nor more than ninety-nine years. At least twenty-five years of the
2 sentence imposed shall be served without benefit of parole, probation, or suspension
3 of sentence.

4 * * *

5 G. In prosecutions for violations of this Section, the trier of fact may
6 determine, utilizing the following factors, whether or not the person displayed or
7 depicted in any photograph, videotape, film, or other video reproduction introduced
8 in evidence was under the age of ~~seventeen~~ eighteen years at the time of filming or
9 recording:

10 * * *

11 §81.2. Molestation of a juvenile or a person with a physical or mental disability

12 A.(1) Molestation of a juvenile is the commission by anyone over the age of
13 seventeen of any lewd or lascivious act upon the person or in the presence of any
14 child under the age of ~~seventeen~~ eighteen, where there is an age difference of greater
15 than two years between the two persons, with the intention of arousing or gratifying
16 the sexual desires of either person, by the use of force, violence, duress, menace,
17 psychological intimidation, threat of great bodily harm, or by the use of influence by
18 virtue of a position of control or supervision over the juvenile. Lack of knowledge
19 of the juvenile's age shall not be a defense.

20 (2) Molestation of a person with a physical or mental disability is the
21 commission by anyone over the age of ~~seventeen~~ eighteen of any lewd or lascivious
22 act upon the victim or in the presence of any victim with the intention of arousing
23 or gratifying the sexual desires of either person, by the use of force, violence, duress,
24 menace, psychological intimidation, threat of great bodily harm, or by the use of
25 influence by virtue of a position of control or supervision over the victim, when any
26 of the following conditions exist:

27 * * *

28 B.(1) Whoever commits the crime of molestation of a juvenile, when the
29 victim is thirteen years of age or older but has not yet attained the age of ~~seventeen~~

1 eighteen, shall be fined not more than five thousand dollars, or imprisoned, with or
2 without hard labor, for not less than five nor more than ten years, or both. The
3 defendant shall not be eligible to have his conviction set aside or his prosecution
4 dismissed in accordance with the provisions of Code of Criminal Procedure Article
5 893.

6 (2) Whoever commits the crime of molestation of a juvenile, when the victim
7 is thirteen years of age or older but has not yet attained the age of ~~seventeen~~
8 eighteen, and when the offender has control or supervision over the juvenile, shall
9 be fined not more than ten thousand dollars, or imprisoned, with or without hard
10 labor, for not less than five nor more than twenty years, or both. The defendant shall
11 not be eligible to have his conviction set aside or his prosecution dismissed in
12 accordance with Code of Criminal Procedure Article 893.

13 (3)(a) Whoever commits the crime of molestation of a juvenile, when the
14 victim is thirteen years of age or older but has not yet attained the age of ~~seventeen~~
15 eighteen, and when the offender is an educator of the juvenile, shall be fined not
16 more than ten thousand dollars, or imprisoned, with or without hard labor, for not
17 less than five nor more than forty years, or both. At least five years of the sentence
18 imposed shall be without the benefit of parole, probation, or suspension of sentence,
19 and the defendant shall not be eligible to have his conviction set aside or his
20 prosecution dismissed in accordance with Code of Criminal Procedure Article 893.

21 * * *

22 §81.3. Computer-aided solicitation of a minor

23 A.(1) Computer-aided solicitation of a minor is committed when a person
24 ~~seventeen~~ eighteen years of age or older knowingly contacts or communicates,
25 through the use of electronic textual communication, with a person who has not yet
26 attained the age of ~~seventeen~~ eighteen where there is an age difference of greater
27 than two years, or a person reasonably believed to have not yet attained the age of
28 ~~seventeen~~ eighteen and reasonably believed to be at least two years younger, for the
29 purpose of or with the intent to persuade, induce, entice, or coerce the person to

1 engage or participate in sexual conduct or a crime of violence as defined in R.S.
2 14:2(B), or with the intent to engage or participate in sexual conduct in the presence
3 of the person who has not yet attained the age of ~~seventeen~~ eighteen, or person
4 reasonably believed to have not yet attained the age of ~~seventeen~~ eighteen.

5 (2) It shall also be a violation of the provisions of this Section when a person
6 ~~seventeen~~ eighteen years of age or older knowingly contacts or communicates,
7 through the use of electronic textual communication, with a person who has not yet
8 attained the age of ~~seventeen~~ eighteen where there is an age difference of greater
9 than two years, or a person reasonably believed to have not yet attained the age of
10 ~~seventeen~~ eighteen and reasonably believed to be at least two years younger, for the
11 purpose of or with the intent to arrange for any third party to engage in any of the
12 conduct proscribed by the provisions of Paragraph (1) of this Subsection.

13 (3) It shall also be a violation of the provisions of this Section when a person
14 ~~seventeen~~ eighteen years of age or older knowingly contacts or communicates,
15 through the use of electronic textual communication, with a person who has not yet
16 attained the age of ~~seventeen~~ eighteen, or a person reasonably believed to have not
17 yet attained the age of ~~seventeen~~ eighteen, for the purpose of recruiting, enticing, or
18 coercing the person to engage in commercial sexual activity.

19 * * *

20 (5) It shall also be a violation of the provisions of this Section when a person
21 ~~seventeen~~ eighteen years of age or older knowingly uses another individual who is
22 ~~seventeen~~ eighteen years of age or older to contact or communicate with a person
23 who has not yet attained the age of ~~seventeen~~ eighteen and there is an age difference
24 of greater than two years between the person contacted and the offender or a person
25 reasonably believed to have not yet attained the age of ~~seventeen~~ eighteen and
26 reasonably believed to be at least two years younger than the offender, for the
27 purpose of or with the intent to engage in any of the conduct proscribed by Paragraph
28 (1) of this Subsection.

1 B.(1)(a) Whoever violates the provisions of this Section when the victim is
 2 thirteen years of age or more but has not attained the age of ~~seventeen~~ eighteen shall
 3 be fined not more than ten thousand dollars and shall be imprisoned at hard labor for
 4 not less than five years nor more than ten years, without benefit of parole, probation,
 5 or suspension of sentence.

6 * * *

7 (c) Whoever violates the provisions of this Section, when the victim is a
 8 person reasonably believed to have not yet attained the age of ~~seventeen~~ eighteen,
 9 shall be fined not more than ten thousand dollars and shall be imprisoned at hard
 10 labor for not less than two years nor more than ten years, without benefit of parole,
 11 probation, or suspension of sentence.

12 * * *

13 C.(1) It shall not constitute a defense to a prosecution brought pursuant to
 14 this Section that the person reasonably believed to be under the age of ~~seventeen~~
 15 eighteen is actually a law enforcement officer or peace officer acting in his official
 16 capacity.

17 * * *

18 §91.13. Illegal use of controlled dangerous substances in the presence of persons
 19 under ~~seventeen~~ eighteen years of age

20 A. It shall be unlawful for any person over the age of ~~seventeen~~ eighteen,
 21 while in the presence of any person under the age of ~~seventeen~~ eighteen and when
 22 there is an age difference of greater than two years between the two persons, to use,
 23 consume, possess, or distribute any controlled dangerous substance in violation of
 24 the Uniform Controlled Dangerous Substances Act.

25 * * *

26 §92. Contributing to the delinquency of juveniles

27 A. Contributing to the delinquency of juveniles is the intentional enticing,
 28 aiding, soliciting, or permitting, by anyone over the age of ~~seventeen~~, of any child

1 under the age of ~~seventeen~~ eighteen, and no exception shall be made for a child who
2 may be emancipated by marriage or otherwise, to:

3 * * *

4 §93. Cruelty to juveniles

5 A. Cruelty to juveniles is:

6 (1) The intentional or criminally negligent mistreatment or neglect by
7 anyone ~~seventeen~~ eighteen years of age or older of any child under the age of
8 ~~seventeen~~ eighteen whereby unjustifiable pain or suffering is caused to said child.
9 Lack of knowledge of the child's age shall not be a defense; or

10 (2) The intentional or criminally negligent exposure by anyone ~~seventeen~~
11 eighteen years of age or older of any child under the age of ~~seventeen~~ eighteen to a
12 clandestine laboratory operation as defined by R.S. 40:983 in a situation where it is
13 foreseeable that the child may be physically harmed. Lack of knowledge of the
14 child's age shall not be a defense.

15 (3) The intentional or criminally negligent allowing of any child under the
16 age of ~~seventeen~~ eighteen years by any person over the age of ~~seventeen~~ eighteen
17 years to be present during the manufacturing, distribution, or purchasing or
18 attempted manufacturing, distribution, or purchasing of a controlled dangerous
19 substance in violation of the Uniform Controlled Dangerous Substances Law. Lack
20 of knowledge of the child's age shall not be a defense.

21 * * *

22 §93.2.3. Second degree cruelty to juveniles

23 A.(1) Second degree cruelty to juveniles is the intentional or criminally
24 negligent mistreatment or neglect by anyone over the age of ~~seventeen~~ to any child
25 under the age of ~~seventeen~~ eighteen which causes serious bodily injury or
26 neurological impairment to that child.

27 * * *

1 §283. Video voyeurism; penalties

2 A. Video voyeurism is any of the following:

3 * * *

4 (3) The manipulation of a victim who has not yet attained the age of
5 ~~seventeen~~ eighteen or who is reasonably believed to have not yet attained the age of
6 ~~seventeen~~ eighteen to use any camera, videotape, photo-optical, photo-electric, or
7 any other image recording device or an unmanned aircraft system equipped with any
8 camera, videotape, photo-optical, photo-electric, or any other image recording device
9 to photograph, film, or videotape oneself to send to the person manipulating the
10 victim for a lewd or lascivious purpose.

11 * * *

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 634 Engrossed 2022 Regular Session McMahan

Abstract: Provides relative to certain offenses committed against minors.

Present law provides for the crimes of sexual battery, second degree sexual battery, felony carnal knowledge of a juvenile, misdemeanor carnal knowledge of a juvenile, pornography involving juveniles, molestation of a juvenile or a person with a physical or mental disability, computer-aided solicitation of a minor, illegal use of controlled dangerous substances in the presence of persons under seventeen years of age, contributing to the delinquency of juveniles, cruelty to juveniles, second degree cruelty to juveniles, and video voyeurism.

Present law further provides that the age of the offenders of those present law crimes is 17 years of age or older.

Proposed law raises the age of the offenders from 17 to 18 years of age or older.

(Amends R.S. 14:43.1(A)(3)(intro. para.) and (C)(2), 43.2(C)(2) and (3)(intro. para.), 80(A)(1), 80.1(A), 81.1(E)(5)(a) and (b) and (G)(intro. para.), 81.2(A)(1) and (2)(intro. para.), (B)(1), (2), and (3)(a), 81.3(A)(1), (2), (3) and (5), (B)(1)(a) and (c) and (C)(1), 91.13(A), 92(A)(intro. para.), 93(A), 93.2.3(A)(1), and 283(A)(3))