

AMENDED IN ASSEMBLY MARCH 27, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1012**

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**Introduced by Assembly Member Corbett**

February 23, 2001

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An act to amend Section 311.11 of the Penal Code, relating to child pornography.

LEGISLATIVE COUNSEL'S DIGEST

AB 1012, as amended, Corbett. Child Pornography.

Under existing law, possession of child pornography is an offense generally punishable as a misdemeanor. Possession of child pornography is a felony under existing law if the defendant has previously been convicted of possession of child pornography.

This bill would make possession of child pornography a felony if a person has a prior conviction for specified offenses where a minor under the age of 16 years was involved, including rape, forcible penetration, aggravated sexual assault of a child, incest, criminal sodomy, *and* criminal oral copulation, ~~and continuous sexual abuse of a child~~, or if a person has a prior conviction for specified offenses where a minor under the age of 14 years was involved, including lewd or lascivious acts, sending seductive matter to a minor, *continuous sexual abuse of a child*, use of a minor to produce matter depicting sexual conduct by a minor, and annoying or molesting a child.

By making a misdemeanor a felony based upon a prior conviction for any of the specified offenses, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 311.11 of the Penal Code is amended to  
 2 read:  
 3 311.11. (a) Every person who knowingly possesses or  
 4 controls any matter, representation of information, data, or image,  
 5 including, but not limited to, any film, filmstrip, photograph,  
 6 negative, slide, photocopy, videotape, video laser disc, computer  
 7 hardware, computer software, computer floppy disc, data storage  
 8 media, CD-ROM, or computer-generated equipment or any other  
 9 computer-generated image that contains or incorporates in any  
 10 manner, any film or filmstrip, the production of which involves the  
 11 use of a person under the age of 18 years, knowing that the matter  
 12 depicts a person under the age of 18 years personally engaging in  
 13 or simulating sexual conduct, as defined in subdivision (d) of  
 14 Section 311.4, is guilty of a public offense and shall be punished  
 15 by imprisonment in the county jail for up to one year, or by a fine  
 16 not exceeding two thousand five hundred dollars (\$2,500), or by  
 17 both the fine and imprisonment.  
 18 (b) If a person has been previously convicted of a violation of  
 19 this section, or of a violation of Section 261, 264.1, 269, 285, 286,  
 20 288a, ~~288.5~~, or 289 where a minor under the age of 16 years was  
 21 involved, or of a violation of Section 288, 288.2, 288.5, 311.4, or  
 22 647.6 where a minor under the age of 14 years was involved, he  
 23 or she is guilty of a felony and shall be punished by imprisonment  
 24 for two, four, or six years.  
 25 (c) It is not necessary to prove that the matter is obscene in order  
 26 to establish a violation of this section.  
 27 (d) This section does not apply to drawings, figurines, statues,  
 28 or any film rated by the Motion Picture Association of America,  
 29 nor does it apply to live or recorded telephone messages when



1 transmitted, disseminated, or distributed as part of a commercial  
2 transaction.

3 SEC. 2. No reimbursement is required by this act pursuant to  
4 Section 6 of Article XIII B of the California Constitution because  
5 the only costs that may be incurred by a local agency or school  
6 district will be incurred because this act creates a new crime or  
7 infraction, eliminates a crime or infraction, or changes the penalty  
8 for a crime or infraction, within the meaning of Section 17556 of  
9 the Government Code, or changes the definition of a crime within  
10 the meaning of Section 6 of Article XIII B of the California  
11 Constitution.

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