

**ASSEMBLY BILL**

**No. 2049**

---

---

**Introduced by Assembly Members Spitzer and Bogh  
(Coauthors: Assembly Members Daucher, Garcia, Haynes, Huff,  
La Suer, Nakanishi, Sharon Runner, Strickland, Tran, and  
Wyland)**

(Coauthors: Senators Battin, Cox, and Dutton)

February 15, 2006

---

---

An act to amend Section 311.11 of the Penal Code, relating to obscene matter.

LEGISLATIVE COUNSEL'S DIGEST

AB 2049, as introduced, Spitzer. Obscene matter: prior convictions.

Under existing law, it is a felony if a person is convicted of possessing or controlling any matter that depicts a minor engaging in or simulating sexual conduct, and that person has previously been convicted of that crime, of bringing into the state for sale or distribution that type of matter, or of employing a minor to engage in the production of that type of matter for commercial purposes.

This bill would add to the types of crimes of which a person has previously been convicted, for purposes of sentencing in a current felony conviction, any offense in any state, federal, or military court that, if committed in this state, would constitute a violation of one of the above-mentioned crimes.

Because the bill would expand the scope of a crime, the 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  
5 image, including, but not limited to, any film, filmstrip,  
6 photograph, negative, slide, photocopy, videotape, video laser  
7 disc, computer hardware, computer software, computer floppy  
8 disc, data storage media, CD-ROM, or computer-generated  
9 equipment or any other computer-generated image that contains  
10 or incorporates in any manner, any film or filmstrip, the  
11 production of which involves the use of a person under the age of  
12 18 years, knowing that the matter depicts a person under the age  
13 of 18 years personally engaging in or simulating sexual conduct,  
14 as defined in subdivision (d) of Section 311.4, is guilty of a  
15 public offense and shall be punished by imprisonment in the  
16 county jail for up to one year, or by a fine not exceeding two  
17 thousand five hundred dollars (\$2,500), or by both the fine and  
18 imprisonment.

19 (b) If a person has been previously convicted of a violation of  
20 this section, or of a violation of subdivision (b) of Section 311.2,  
21 or subdivision (b) of Section 311.4, *or has previously been*  
22 *convicted of an offense in any state, federal, or military court*  
23 *that, if committed in this state would constitute a violation of this*  
24 *section or subdivision (b) of Section 311.2 or subdivision (b) of*  
25 *Section 311.4*, he or she is guilty of a felony and shall be  
26 punished by imprisonment for two, four, or six years.

27 (c) It is not necessary to prove that the matter is obscene in  
28 order to establish a violation of this section.

29 (d) This section does not apply to drawings, figurines, statues,  
30 or any film rated by the Motion Picture Association of America,  
31 nor does it apply to live or recorded telephone messages when  
32 transmitted, disseminated, or distributed as part of a commercial  
33 transaction.

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

O