

AMENDED IN ASSEMBLY MARCH 21, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2049

**Introduced by Assembly Members ~~Spitzer and Bogn~~ Member
*Spitzer***

**(~~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~~ *add Section 3053.6* to the Penal Code, relating to obscene matter.

LEGISLATIVE COUNSEL'S DIGEST

AB 2049, as amended, *Spitzer*. ~~Obscene matter: prior convictions.
Sex offenders: parole.~~

Existing law generally regulates the parole of sex offenders and the terms and conditions of parole that may be placed on those offenders upon release from prison.

This bill would provide that any person who has been convicted of an offense that requires him or her to register as a sex offender must, as a term of parole be prohibited from contacting or communicating with the victim, or victims or any of their immediate family members, as defined.

This bill would further provide that this term of parole may be waived by the parole authority in the interests of justice, as specified.

~~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~~ no.

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

1 SECTION 1. Section 3053.6 is added to the Penal Code, to
2 read:

3 3053.6. A person who has been convicted of any offense that
4 requires him or her to register as a sex offender pursuant to
5 Section 290 shall, in addition to any other conditions, have the
6 following conditions of parole:

7 (a) The parolee shall not contact or communicate with the
8 victim or victims or any of the victims' immediate family
9 members. This includes visiting or frequenting the place of their
10 residence, work, or crime scene, whether or not that person is
11 present.

12 (b) The parole authority may waive the requirements specified
13 in subdivision (a) in the interests of justice with the consent of the
14 victim, or the victim's parents or legal guardian if the victim is a
15 minor, and shall document the reason for doing so in the
16 parolee's file. In the event that the victim, or the victim's parents
17 or legal guardian if the victim is a minor, agrees to waive the
18 requirements specified in subdivision (a), but any of the victim's
19 immediate family does not, the parole authority may permit

1 *contact with the victim, but not the immediate family members*
2 *who refused to consent.*

3 *(c) For the purpose of this section:*

4 *(1) "Immediate family members" shall mean the spouse,*
5 *children, or parents of the victim.*

6 *(2) "Contact or communication" includes personal,*
7 *telephonic, electronic, or written contact.*

8 SECTION 1. Section 311.11 of the Penal Code is amended to
9 read:

10 ~~311.11. (a) Every person who knowingly possesses or~~
11 ~~controls any matter, representation of information, data, or~~
12 ~~image, including, but not limited to, any film, filmstrip,~~
13 ~~photograph, negative, slide, photocopy, videotape, video laser~~
14 ~~disc, computer hardware, computer software, computer floppy~~
15 ~~disc, data storage media, CD-ROM, or computer-generated~~
16 ~~equipment or any other computer-generated image that contains~~
17 ~~or incorporates in any manner, any film or filmstrip, the~~
18 ~~production of which involves the use of a person under the age of~~
19 ~~18 years, knowing that the matter depicts a person under the age~~
20 ~~of 18 years personally engaging in or simulating sexual conduct,~~
21 ~~as defined in subdivision (d) of Section 311.4, is guilty of a~~
22 ~~public offense and shall be punished by imprisonment in the~~
23 ~~county jail for up to one year, or by a fine not exceeding two~~
24 ~~thousand five hundred dollars (\$2,500), or by both the fine and~~
25 ~~imprisonment.~~

26 ~~(b) If a person has been previously convicted of a violation of~~
27 ~~this section, or of a violation of subdivision (b) of Section 311.2,~~
28 ~~or subdivision (b) of Section 311.4, or has previously been~~
29 ~~convicted of an offense in any state, federal, or military court~~
30 ~~that, if committed in this state would constitute a violation of this~~
31 ~~section or subdivision (b) of Section 311.2 or subdivision (b) of~~
32 ~~Section 311.4, he or she is guilty of a felony and shall be~~
33 ~~punished by imprisonment for two, four, or six years.~~

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

36 ~~(d) This section does not apply to drawings, figurines, statues,~~
37 ~~or any film rated by the Motion Picture Association of America,~~
38 ~~nor does it apply to live or recorded telephone messages when~~
39 ~~transmitted, disseminated, or distributed as part of a commercial~~
40 ~~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.~~

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