

**ASSEMBLY BILL**

**No. 2104**

---

---

**Introduced by Assembly Member Smyth**

February 19, 2008

---

---

An act to add Section 311.12 to the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 2104, as introduced, Smyth. Pornography: unauthorized photographs of minors.

Existing law makes it a crime to engage in specified acts involving the sale, distribution, and publication of obscene matter involving a person under the age of 18 years.

This bill would prohibit a person from preparing, posting, or publishing a photograph or image of a minor under 18 years of age, without the minor's knowledge or consent, on an Internet Web site containing obscene matter. The bill would make a violation of that provision a crime, punishable by imprisonment in the county jail for up to one year, or by a fine of no more than \$5,000, or by both that fine and imprisonment. By creating a new crime, the bill would impose 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. The Legislature finds and declares the following:

2 (a) Images of local high school athletes, some as young as 14  
3 years of age, are being posted on pornographic Internet Web sites.

4 (b) On these Web sites, photographs of minors are juxtaposed  
5 with photographs of nude or semi-nude young males and graphic  
6 content and are the subject of lewd comments in Internet chat  
7 rooms.

8 (c) The presence of these photographs has alarmed parents,  
9 coaches, and school officials and has traumatized athletes who  
10 were not aware they were being photographed while participating  
11 in school athletic events.

12 (d) It is the intent of the Legislature to enact legislation to protect  
13 minors from being traumatized and exploited through the  
14 unauthorized use of their images on pornographic Internet Web  
15 sites.

16 SEC. 2. Section 311.12 is added to the Penal Code, to read:

17 311.12. (a) Any person who prepares, posts, or publishes a  
18 photograph or image of a minor under 18 years of age, without  
19 the knowledge or consent of the minor, on an Internet Web site  
20 containing obscene matter, with knowledge that the Web site  
21 contains obscene matter, shall be punished by imprisonment in the  
22 county jail for up to one year, or by a fine not exceeding five  
23 thousand dollars (\$5,000), or by both that fine and imprisonment.

24 (b) Subdivision (a) shall apply even if the minor is fully clothed  
25 in a photograph or image that is posted on a Web site containing  
26 obscene matter.

27 SEC. 3. No reimbursement is required by this act pursuant to  
28 Section 6 of Article XIII B of the California Constitution because  
29 the only costs that may be incurred by a local agency or school  
30 district will be incurred because this act creates a new crime or  
31 infraction, eliminates a crime or infraction, or changes the penalty  
32 for a crime or infraction, within the meaning of Section 17556 of  
33 the Government Code, or changes the definition of a crime within  
34 the meaning of Section 6 of Article XIII B of the California  
35 Constitution.

O