

AMENDED IN ASSEMBLY MARCH 30, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 321**

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**Introduced by Assembly Member Roger Hernández**

February 9, 2011

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An act to add Section 51207 to the Education Code, and to add Section 729.14 to the Welfare and Institutions Code, relating to juveniles.

LEGISLATIVE COUNSEL'S DIGEST

AB 321, as amended, Roger Hernández. Juvenile offenders: obscene material.

*Existing law requires the adopted course of study for grades 1 to 6, inclusive, and for grades 7 to 12, inclusive, to offer courses in specified areas of study.*

*This bill would authorize a school district to provide instruction regarding the potential risks and consequences of creating and sharing sexually suggestive or sexually explicit materials through cellular telephones, social networking Internet Web sites, computer networks, or other digital media.*

Existing law provides that any person under 18 years of age who commits a crime is within the jurisdiction of the juvenile court, except as specified. Existing law makes it a felony to knowingly possess or control any matter that contains or incorporates the use of a person under 18 years of age personally engaging in or simulating sexual conduct, as specified.

This bill would ~~authorize~~ *require* the court, if the sexually explicit matter was in the possession of a minor, to order the minor to ~~pay a fine not to exceed \$1,000,~~ *perform community service* and to undergo

counseling, with the cost of counseling to be borne by the minor’s parents, as specified. The bill would also make legislative findings and declarations regarding the problems associated with sexting, which is defined as the sending or receiving of sexually explicit pictures or video images via cellular phone or similar electronic device.

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

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

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) According to the CTIA Wireless Association, as of 2009,  
4 there are 285.6 million wireless subscribers in the United States.  
5 On average, each subscriber sends 152.7 text messages on a  
6 monthly basis.

7 (b) Sexting, which is defined as the sending or receiving of  
8 sexually explicit pictures or video images via cellular phone or  
9 similar electronic device, is a growing problem among minors.  
10 According to a 2008 survey conducted by the National Campaign  
11 to Prevent Teen and Unplanned Pregnancy, 20 percent of teens  
12 between 13 and 19 years of age have sent or posted nude or  
13 semi-nude pictures or videos of themselves.

14 (c) While teens generally send these images to an intended  
15 recipient, more often than not, these images are shared with others.  
16 Thirty-eight percent of teens report that they have received sexts  
17 that were meant for someone else but were shared with them.

18 (d) The potential for these images to reach such a wide and  
19 unknown audience can cause the person ridicule and greatly  
20 compromise his or her future educational and career opportunities.

21 (e) United States Senator Robert Menendez of New Jersey  
22 introduced the SAFE Internet Act (S. 1047), which would allocate  
23 \$175 million to funding the program and authorize the Director  
24 of the Bureau of Justice Assistance to make grants available to  
25 schools, state agencies, and nonprofit organizations to assist in  
26 providing education programs for children about the dangers of  
27 sexting.

28 (f) In an incident of cyberbullying, photos of a sexual encounter  
29 can be recorded on a cell phone camera and posted on the Internet  
30 within an hour.

1 (g) According to the Pew Research Center, sexting has become  
2 a form of “relationship currency” that causes girls, in particular,  
3 to feel pressure to send sexually explicit images.

4 (h) Sexting extends beyond being a source of embarrassment,  
5 but can also prevent those pictured in the images from obtaining  
6 certain types of employment and even scholarships.

7 (i) Developments in technology and communication has allowed  
8 for widespread dissemination of these damaging images within  
9 moments. The nature of today’s technology is such that these  
10 images may never be recovered or removed from the Internet.

11 *SEC. 2. Section 51207 is added to the Education Code, to read:*  
12 *51207. A school district may provide instruction regarding the*  
13 *potential risks and consequences of creating and sharing sexually*  
14 *suggestive or sexually explicit materials through cellular*  
15 *telephones, social networking Internet Web sites, computer*  
16 *networks, or other digital media.*

17 ~~SEC. 2.~~

18 *SEC. 3. Section 729.14 is added to the Welfare and Institutions*  
19 *Code, to read:*

20 729.14. If a minor is found to be a person described in Section  
21 602 by reason of the commission of an offense described in Section  
22 311.11 of the Penal Code, the court shall, in addition to any other  
23 fine, sentence, or as a condition of probation, order the minor to  
24 ~~pay a fine not exceeding one thousand dollars (\$1,000), and attend~~  
25 *perform community service and attend* counseling at the expense  
26 of the minor’s parents. The court shall take into consideration the  
27 ability of the minor’s parents consistent with Section 730.7 to pay;  
28 however, no minor shall be relieved of attending counseling  
29 because of the minor’s parents’ inability to pay for the counseling  
30 imposed by this section.