

Assembly Bill No. 20

CHAPTER 143

An act to amend Section 1203.4 of, and to add Section 311.12 to, the Penal Code, relating to obscene matter.

[Approved by Governor August 26, 2013. Filed with
Secretary of State August 26, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

AB 20, Waldron. Obscene matter: minors.

Existing law generally prohibits the production, distribution, and production of any representation of information, data, or image, as specified, of any obscene matter that depicts a person under 18 years of age personally engaging in or personally simulating sexual conduct, as defined. Violations of these provisions are crimes.

This bill would provide that every person who is convicted of a violation of specified offenses relating to obscene matter involving minors, as specified, in which the violation is committed on, or via, a government-owned computer or via a government-owned computer network, or in which the production, transportation, or distribution of which involves the use, possession, or control of government-owned property shall, in addition to any imprisonment or fine imposed for the commission of the underlying offense, be punished by a fine not exceeding \$2,000, unless the court determines that the defendant does not have the ability to pay. The bill would provide that revenue from any fines collected would be transferred for deposit into a county fund established for that purpose and allocated for sexual assault investigator training, public agencies and nonprofit corporations that provide shelter, counseling, or other direct services for victims of human trafficking, and multidisciplinary teams involved in the prosecution of child abuse cases, as specified.

Existing law allows for the release from all penalties and disabilities resulting from an offense for which the person was convicted if specified criteria are met. Existing law excludes certain sex offenses from these provisions.

This bill would additionally exclude specified offenses relating to obscene matter involving minors from these provisions.

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

SECTION 1. Section 311.12 is added to the Penal Code, to read:

311.12. (a) (1) Every person who is convicted of a violation of Section 311.1, 311.2, 311.3, 311.10, or 311.11 in which the offense involves the

production, use, possession, control, or advertising of matter or image that depicts a person under 18 years of age personally engaging in or simulating sexual conduct, as defined in subdivision (d) of Section 311.4, in which the violation is committed on, or via, a government-owned computer or via a government-owned computer network, shall, in addition to any imprisonment or fine imposed for the commission of the underlying offense, be punished by a fine not exceeding two thousand dollars (\$2,000), unless the court determines that the defendant does not have the ability to pay.

(2) Every person who is convicted of a violation of Section 311.1, 311.2, 311.3, 311.10, or 311.11 in which the offense involves the production, use, possession, control, or advertising of matter or image that depicts a person under 18 years of age personally engaging in or simulating sexual conduct, as defined in subdivision (d) of Section 311.4, in which the production, transportation, or distribution of which involves the use, possession, or control of government-owned property shall, in addition to any imprisonment or fine imposed for the commission of the underlying offense, be punished by a fine not exceeding two thousand dollars (\$2,000), unless the court determines that the defendant does not have the ability to pay.

(b) The fines in subdivision (a) shall not be subject to the provisions of Sections 70372, 76000, 76000.5, and 76104.6 of the Government Code, or Sections 1464 and 1465.7 of this code.

(c) Revenue from any fines collected pursuant to this section shall be deposited into a county fund established for that purpose and allocated as follows, and a county may transfer all or part of any of those allocations to another county for the allocated use:

- (1) One-third for sexual assault investigator training.
- (2) One-third for public agencies and nonprofit corporations that provide shelter, counseling, or other direct services for victims of human trafficking.
- (3) One-third for multidisciplinary teams.
- (d) As used in this section:
 - (1) “Computer” includes any computer hardware, computer software, computer floppy disk, data storage medium, or CD-ROM.
 - (2) “Government-owned” includes property and networks owned or operated by state government, city government, city and county government, county government, a public library, or a public college or university.
 - (3) “Multidisciplinary teams” means a child-focused, facility-based program in which representatives from many disciplines, including law enforcement, child protection, prosecution, medical and mental health, and victim and child advocacy work together to conduct interviews and make team decisions about the investigation, treatment, management, and prosecution of child abuse cases, including child sexual abuse cases. It is the intent of the Legislature that this multidisciplinary team approach will protect victims of child abuse from multiple interviews, result in a more complete understanding of case issues, and provide the most effective child and family-focused system response possible.

(e) Nothing in this section shall be construed to require any government or government entity to retain data in violation of any provision of state or federal law.

SEC. 2. Section 1203.4 of the Penal Code is amended to read:

1203.4. (a) (1) In any case in which a defendant has fulfilled the conditions of probation for the entire period of probation, or has been discharged prior to the termination of the period of probation, or in any other case in which a court, in its discretion and the interests of justice, determines that a defendant should be granted the relief available under this section, the defendant shall, at any time after the termination of the period of probation, if he or she is not then serving a sentence for any offense, on probation for any offense, or charged with the commission of any offense, be permitted by the court to withdraw his or her plea of guilty or plea of nolo contendere and enter a plea of not guilty; or, if he or she has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty; and, in either case, the court shall thereupon dismiss the accusations or information against the defendant and except as noted below, he or she shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted, except as provided in Section 13555 of the Vehicle Code. The probationer shall be informed, in his or her probation papers, of this right and privilege and his or her right, if any, to petition for a certificate of rehabilitation and pardon. The probationer may make the application and change of plea in person or by attorney, or by the probation officer authorized in writing. However, in any subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if probation had not been granted or the accusation or information dismissed. The order shall state, and the probationer shall be informed, that the order does not relieve him or her of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for public office, for licensure by any state or local agency, or for contracting with the California State Lottery Commission.

(2) Dismissal of an accusation or information pursuant to this section does not permit a person to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6.

(3) Dismissal of an accusation or information underlying a conviction pursuant to this section does not permit a person prohibited from holding public office as a result of that conviction to hold public office.

(4) This subdivision shall apply to all applications for relief under this section which are filed on or after November 23, 1970.

(b) Subdivision (a) of this section does not apply to any misdemeanor that is within the provisions of Section 42002.1 of the Vehicle Code, to any violation of subdivision (c) of Section 286, Section 288, subdivision (c) of Section 288a, Section 288.5, subdivision (j) of Section 289, Section 311.1, 311.2, 311.3, or 311.11, or any felony conviction pursuant to subdivision (d) of Section 261.5, or to any infraction.

(c) (1) Except as provided in paragraph (2), subdivision (a) does not apply to a person who receives a notice to appear or is otherwise charged with a violation of an offense described in subdivisions (a) to (e), inclusive, of Section 12810 of the Vehicle Code.

(2) If a defendant who was convicted of a violation listed in paragraph (1) petitions the court, the court in its discretion and in the interests of justice, may order the relief provided pursuant to subdivision (a) to that defendant.

(d) A person who petitions for a change of plea or setting aside of a verdict under this section may be required to reimburse the court for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the court not to exceed one hundred fifty dollars (\$150), and to reimburse the county for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the county board of supervisors not to exceed one hundred fifty dollars (\$150), and to reimburse any city for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the city council not to exceed one hundred fifty dollars (\$150). Ability to make this reimbursement shall be determined by the court using the standards set forth in paragraph (2) of subdivision (g) of Section 987.8 and shall not be a prerequisite to a person's eligibility under this section. The court may order reimbursement in any case in which the petitioner appears to have the ability to pay, without undue hardship, all or any portion of the costs for services established pursuant to this subdivision.

(e) (1) Relief shall not be granted under this section unless the prosecuting attorney has been given 15 days' notice of the petition for relief. The probation officer shall notify the prosecuting attorney when a petition is filed, pursuant to this section.

(2) It shall be presumed that the prosecuting attorney has received notice if proof of service is filed with the court.

(f) If, after receiving notice pursuant to subdivision (e), the prosecuting attorney fails to appear and object to a petition for dismissal, the prosecuting attorney may not move to set aside or otherwise appeal the grant of that petition.

(g) Notwithstanding the above provisions or any other provision of law, the Governor shall have the right to pardon a person convicted of a violation of subdivision (c) of Section 286, Section 288, subdivision (c) of Section 288a, Section 288.5, or subdivision (j) of Section 289, if there are extraordinary circumstances.