

Introduced by Senator Pavley
(Principal coauthor: Assembly Member Gorell)

January 31, 2013

An act to amend Section 311.11 of the Penal Code, relating to sex offenders.

LEGISLATIVE COUNSEL'S DIGEST

SB 145, as introduced, Pavley. Sex offenders: child pornography.

Existing law makes it a felony, punishable by imprisonment in the state prison for 16 months, or 2 or 3 years, or in a county jail for up to one year, or by a fine not exceeding \$2,500, or by both the fine and imprisonment, to knowingly possess or control child pornography, as specified. A subsequent violation of this provision is punishable by imprisonment in the state prison for 2, 4, or 6 years.

This bill would delete the sentencing structure of 2, 4, or 6 years for a subsequent violation of that provision and increase it to 3, 5, or 7 years. This bill would also make it either a felony, punishable by imprisonment in the state prison for 3, 5, or 7 years, or a misdemeanor, punishable by imprisonment in a county jail for up to one year, or by a fine not exceeding \$2,500, or by both the fine and imprisonment, if the person knowingly possesses or controls child pornography, as specified, and the matter contains more than 600 images, as defined, at least 10 of which are images of prepubescent minors or minors under 12 years of age; or the person intends to use the images to persuade, induce, entice, coerce, or facilitate the travel of a minor to engage in sexual activity; or the matter portrays sexual sadism or sexual masochism involving a minor.

This bill would make other technical, nonsubstantive, and conforming changes.

Existing law, Proposition 83, as approved by the voters at the November 7, 2006, statewide general election, amended Section 311.11 of the Penal Code. The act authorizes the Legislature to amend its provisions to expand the scope of its application or to increase the punishments or penalties established by the act by a statute passed by a majority vote of each house thereof.

Because the bill would increase punishments provided in the act by increasing the sentencing for a subsequent possession of child pornography conviction from 2, 4, or 6 years to 3, 5, or 7 years the bill may be passed by a majority vote of each house of the Legislature.

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

1 (b) Every person who commits a violation of subdivision (a),
2 and who has been previously convicted of a violation of this
3 section, an offense requiring registration under the Sex Offender
4 Registration Act, or an attempt to commit any of the
5 above-mentioned offenses, is guilty of a felony and shall be
6 punished by imprisonment in the state prison for ~~two, four, or six~~
7 *three, five, or seven years.*

8 (c) *Each person who commits a violation of subdivision (a) shall*
9 *be punished by imprisonment in the state prison for three, five, or*
10 *seven years, or shall be punished by imprisonment in a county jail*
11 *for up to one year, or by a fine not exceeding two thousand five*
12 *hundred dollars (\$2,500), or by both the fine and imprisonment,*
13 *if one of the following factors exists:*

14 (1) *The matter contains more than 600 images that violate*
15 *subdivision (a), and the matter contains 10 or more images*
16 *involving a prepubescent minor or a minor who has not attained*
17 *12 years of age.*

18 (2) *The person intends to use the matter to persuade, induce,*
19 *entice, coerce, or facilitate the travel of a minor for the purpose*
20 *of committing an offense listed in subdivision (c) of Section 290,*
21 *or has attempted to commit any of the offenses described in this*
22 *paragraph.*

23 (3) *The matter portrays sexual sadism or sexual masochism*
24 *involving a person under 18 years of age.*

25 ~~(e)~~

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

28 ~~(d)~~

29 (e) *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.*

34 (f) *For purposes of determining the number of images under*
35 *paragraph (1) of subdivision (c), the following shall apply:*

36 (1) *Each photograph, picture, computer, or computer-generated*
37 *image, or any similar visual depiction shall be considered to be*
38 *one image.*

39 (2) *Each video, video-clip, movie, or similar visual depiction*
40 *shall be considered to have 75 images.*

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 penalty
6 for a crime or infraction, within the meaning of Section 17556 of
7 the Government Code, or changes the definition of a crime within
8 the meaning of Section 6 of Article XIII B of the California
9 Constitution.

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