

AMENDED IN ASSEMBLY APRIL 13, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2536

Introduced by Assembly Member Chau

February 19, 2016

An act to amend Sections 48900 and 51934 of the Education Code, relating to elementary and secondary education.

LEGISLATIVE COUNSEL'S DIGEST

AB 2536, as amended, Chau. Pupil discipline and instruction: sexting.

(1) Existing law prohibits the suspension of a pupil from school or the recommendation of a pupil for expulsion from school unless the school district superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has committed any of several specified ~~acts~~. *acts, including, but not limited to, engaging in acts of bullying by means of an electronic act.*

This bill would include engaging in an act of sexting, as defined, as an act *of bullying by means of an electronic act* for which a pupil may be suspended or expelled from school.

(2) Existing law, the California Healthy Youth Act, requires school districts to ensure that all pupils in grades 7 to 12, inclusive, receive comprehensive sexual health education and HIV prevention education, as specified. Under the act, this instruction includes, among other things, information about sexual harassment, sexual assault, adolescent relationship abuse, intimate partner violence, and sex trafficking.

This bill would require this instruction to additionally include information about sexting, as defined, as specified. By imposing additional duties on school districts, this bill would impose a state-mandated local program.

(3) 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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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. (a) The Legislature finds and declares the*
2 *following:*

3 *(1) The issue of sexting, the sending of sexually explicit*
4 *photographs, videos, or messages via cell phone or instant*
5 *messenger, is an increasingly prevalent issue among teenagers.*

6 *(2) According to the American Academy of Pediatrics, 20*
7 *percent of teenage boys and girls have sent a sext message.*

8 *(3) Sexting has serious legal and social consequences for pupils*
9 *who engage in it.*

10 *(4) Schools across the country have been suspending pupils for*
11 *sexting.*

12 *(5) Section 48900.5 of the Education Code provides that*
13 *suspension shall be imposed only when other means of correction*
14 *fail to bring about proper conduct.*

15 *(b) It is the intent of the Legislature that a suspension or*
16 *expulsion for sexting under the amendments of this act to Section*
17 *48900 of the Education Code only occurs after school*
18 *administrators first use other means of correction outlined in*
19 *Section 48900.5 of the Education Code.*

20 ~~SECTION 1.~~

21 *SEC. 2. Section 48900 of the Education Code is amended to*
22 *read:*

23 48900. A pupil shall not be suspended from school or
24 recommended for expulsion, unless the superintendent of the school
25 district or the principal of the school in which the pupil is enrolled
26 determines that the pupil has committed an act as defined pursuant
27 to any of subdivisions (a) to ~~(s)~~, (r), inclusive:

1 (a) (1) Caused, attempted to cause, or threatened to cause
2 physical injury to another person.

3 (2) Willfully used force or violence upon the person of another,
4 except in self-defense.

5 (b) Possessed, sold, or otherwise furnished a firearm, knife,
6 explosive, or other dangerous object, unless, in the case of
7 possession of an object of this type, the pupil had obtained written
8 permission to possess the item from a certificated school employee,
9 which is concurred in by the principal or the designee of the
10 principal.

11 (c) Unlawfully possessed, used, sold, or otherwise furnished,
12 or been under the influence of, a controlled substance listed in
13 Chapter 2 (commencing with Section 11053) of Division 10 of the
14 Health and Safety Code, an alcoholic beverage, or an intoxicant
15 of any kind.

16 (d) Unlawfully offered, arranged, or negotiated to sell a
17 controlled substance listed in Chapter 2 (commencing with Section
18 11053) of Division 10 of the Health and Safety Code, an alcoholic
19 beverage, or an intoxicant of any kind, and either sold, delivered,
20 or otherwise furnished to a person another liquid, substance, or
21 material and represented the liquid, substance, or material as a
22 controlled substance, alcoholic beverage, or intoxicant.

23 (e) Committed or attempted to commit robbery or extortion.

24 (f) Caused or attempted to cause damage to school property or
25 private property.

26 (g) Stole or attempted to steal school property or private
27 property.

28 (h) Possessed or used tobacco, or products containing tobacco
29 or nicotine products, including, but not limited to, cigarettes, cigars,
30 miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew
31 packets, and betel. However, this section does not prohibit the use
32 or possession by a pupil of his or her own prescription products.

33 (i) Committed an obscene act or engaged in habitual profanity
34 or vulgarity.

35 (j) Unlawfully possessed or unlawfully offered, arranged, or
36 negotiated to sell drug paraphernalia, as defined in Section 11014.5
37 of the Health and Safety Code.

38 (k) (1) Disrupted school activities or otherwise willfully defied
39 the valid authority of supervisors, teachers, administrators, school

officials, or other school personnel engaged in the performance of their duties.

(2) Except as provided in Section 48910, a pupil enrolled in kindergarten or any of grades 1 to 3, inclusive, shall not be suspended for any of the acts enumerated in this subdivision, and this subdivision shall not constitute grounds for a pupil enrolled in kindergarten or any of grades 1 to 12, inclusive, to be recommended for expulsion. This paragraph shall become inoperative on July 1, 2018, unless a later enacted statute that becomes operative before July 1, 2018, deletes or extends that date.

(l) Knowingly received stolen school property or private property.

(m) Possessed an imitation firearm. As used in this section, “imitation firearm” means a replica of a firearm that is so substantially similar in physical properties to an existing firearm as to lead a reasonable person to conclude that the replica is a firearm.

(n) Committed or attempted to commit a sexual assault as defined in Section 261, 266c, 286, 288, 288a, or 289 of the Penal Code or committed a sexual battery as defined in Section 243.4 of the Penal Code.

(o) Harassed, threatened, or intimidated a pupil who is a complaining witness or a witness in a school disciplinary proceeding for purposes of either preventing that pupil from being a witness or retaliating against that pupil for being a witness, or both.

(p) Unlawfully offered, arranged to sell, negotiated to sell, or sold the prescription drug Soma.

(q) Engaged in, or attempted to engage in, hazing. For purposes of this subdivision, “hazing” means a method of initiation or preinitiation into a pupil organization or body, whether or not the organization or body is officially recognized by an educational institution, that is likely to cause serious bodily injury or personal degradation or disgrace resulting in physical or mental harm to a former, current, or prospective pupil. For purposes of this subdivision, “hazing” does not include athletic events or school-sanctioned events.

(r) Engaged in an act of bullying. For purposes of this subdivision, the following terms have the following meanings:

1 (1) “Bullying” means any severe or pervasive physical or verbal
2 act or conduct, including communications made in writing or by
3 means of an electronic act, and including one or more acts
4 committed by a pupil or group of pupils as defined in Section
5 48900.2, 48900.3, or 48900.4, directed toward one or more pupils
6 that has or can be reasonably predicted to have the effect of one
7 or more of the following:

8 (A) Placing a reasonable pupil or pupils in fear of harm to that
9 pupil’s or those pupils’ person or property.

10 (B) Causing a reasonable pupil to experience a substantially
11 detrimental effect on his or her physical or mental health.

12 (C) Causing a reasonable pupil to experience substantial
13 interference with his or her academic performance.

14 (D) Causing a reasonable pupil to experience substantial
15 interference with his or her ability to participate in or benefit from
16 the services, activities, or privileges provided by a school.

17 (2) (A) “Electronic act” means the creation or transmission
18 originated on or off the schoolsite, by means of an electronic
19 device, including, but not limited to, a telephone, wireless
20 telephone, or other wireless communication device, computer, or
21 pager, of a communication, including, but not limited to, any of
22 the following:

23 (i) A message, text, sound, or image.

24 (ii) A post on a social network Internet Web site, including, but
25 not limited to:

26 (I) Posting to or creating a burn page. “Burn page” means an
27 Internet Web site created for the purpose of having one or more
28 of the effects listed in paragraph (1).

29 (II) Creating a credible impersonation of another actual pupil
30 for the purpose of having one or more of the effects listed in
31 paragraph (1). “Credible impersonation” means to knowingly and
32 without consent impersonate a pupil for the purpose of bullying
33 the pupil and such that another pupil would reasonably believe, or
34 has reasonably believed, that the pupil was or is the pupil who was
35 impersonated.

36 (III) Creating a false profile for the purpose of having one or
37 more of the effects listed in paragraph (1). “False profile” means
38 a profile of a fictitious pupil or a profile using the likeness or
39 attributes of an actual pupil other than the pupil who created the
40 false profile.

(iii) *An act of sexting.*

(I) *For purposes of this clause, “sexting” means the dissemination of, or the solicitation or incitement to disseminate, a photograph or other visual recording by a pupil to another pupil or to school personnel by means of an electronic act with the purpose or effect of humiliating or harassing a pupil. A photograph or other visual recording, as described above, shall include the depiction of a nude, semi-nude, or sexually explicit photograph or other visual recording of a minor where the minor is identifiable from the photograph, visual recording, or other electronic act.*

(II) *For purposes of this clause, “sexting” does not include a depiction, portrayal, or image that has any serious literary, artistic, educational, political, or scientific value or that involves athletic events or school-sanctioned activities.*

(B) Notwithstanding paragraph (1) and subparagraph (A), an electronic act shall not constitute pervasive conduct solely on the basis that it has been transmitted on the Internet or is currently posted on the Internet.

(3) “Reasonable pupil” means a pupil, including, but not limited to, an exceptional needs pupil, who exercises average care, skill, and judgment in conduct for a person of his or her age, or for a person of his or her age with his or her exceptional needs.

~~(s) (1) Engaged in an act of sexting.~~

~~(2) For purposes of this subdivision, “sexting” means the dissemination of, or the solicitation or incitement to disseminate, a photograph or other visual recording by a pupil to another pupil or to school personnel by means of an electronic act with the purpose or effect of humiliating or harassing a pupil. A photograph or other visual recording, as described above, shall include the depiction of any of the following:~~

~~(A) A minor’s exposed or visible genitals, pubic area, or rectal area, or the nipple or areola of a minor female’s breast.~~

~~(B) A sexually explicit photograph or other visual recording of a minor where the minor is identifiable from the photograph or visual recording or the electronic act.~~

~~(3) For purposes of this subdivision, “sexting” does not include a depiction, portrayal, or image that has any serious literary, artistic, educational, political, or scientific value or that involves athletic events or school-sanctioned activities.~~

~~(t)~~

(s) A pupil shall not be suspended or expelled for any of the acts enumerated in this section unless the act is related to a school activity or school attendance occurring within a school under the jurisdiction of the superintendent of the school district or principal or occurring within any other school district. A pupil may be suspended or expelled for acts that are enumerated in this section and related to a school activity or school attendance that occur at any time, including, but not limited to, any of the following:

- (1) While on school grounds.
- (2) While going to or coming from school.
- (3) During the lunch period whether on or off the campus.
- (4) During, or while going to or coming from, a school-sponsored activity.

~~(t)~~
(t) A pupil who aids or abets, as defined in Section 31 of the Penal Code, the infliction or attempted infliction of physical injury to another person may be subject to suspension, but not expulsion, pursuant to this section, except that a pupil who has been adjudged by a juvenile court to have committed, as an aider and abettor, a crime of physical violence in which the victim suffered great bodily injury or serious bodily injury shall be subject to discipline pursuant to subdivision (a).

~~(v)~~
(u) As used in this section, “school property” includes, but is not limited to, electronic files and databases.

~~(w)~~
(v) For a pupil subject to discipline under this section, a superintendent of the school district or principal may use his or her discretion to provide alternatives to suspension or expulsion that are age appropriate and designed to address and correct the pupil’s specific misbehavior as specified in Section 48900.5.

~~(x)~~
(w) It is the intent of the Legislature that alternatives to suspension or expulsion be imposed against a pupil who is truant, tardy, or otherwise absent from school activities.

~~SEC. 2.~~
SEC. 3. Section 51934 of the Education Code is amended to read:

51934. (a) Each school district shall ensure that all pupils in grades 7 to 12, inclusive, receive comprehensive sexual health

1 education and HIV prevention education from instructors trained
2 in the appropriate courses. Each pupil shall receive this instruction
3 at least once in junior high or middle school and at least once in
4 high school. This instruction shall include all of the following:

5 (1) Information on the nature of HIV, as well as other sexually
6 transmitted infections, and their effects on the human body.

7 (2) Information on the manner in which HIV and other sexually
8 transmitted infections are and are not transmitted, including
9 information on the relative risk of infection according to specific
10 behaviors, including sexual activities and injection drug use.

11 (3) Information that abstinence from sexual activity and injection
12 drug use is the only certain way to prevent HIV and other sexually
13 transmitted infections and abstinence from sexual intercourse is
14 the only certain way to prevent unintended pregnancy. Instruction
15 shall provide information about the value of delaying sexual
16 activity while also providing medically accurate information on
17 other methods of preventing HIV and other sexually transmitted
18 infections and pregnancy.

19 (4) Information about the effectiveness and safety of all federal
20 Food and Drug Administration (FDA) approved methods that
21 prevent or reduce the risk of contracting HIV and other sexually
22 transmitted infections, including use of antiretroviral medication,
23 consistent with the federal Centers for Disease Control and
24 Prevention.

25 (5) Information about the effectiveness and safety of reducing
26 the risk of HIV transmission as a result of injection drug use by
27 decreasing needle use and needle sharing.

28 (6) Information about the treatment of HIV and other sexually
29 transmitted infections, including how antiretroviral therapy can
30 dramatically prolong the lives of many people living with HIV
31 and reduce the likelihood of transmitting HIV to others.

32 (7) Discussion about social views on HIV and AIDS, including
33 addressing unfounded stereotypes and myths regarding HIV and
34 AIDS and people living with HIV. This instruction shall emphasize
35 that successfully treated HIV-positive individuals have a normal
36 life expectancy, all people are at some risk of contracting HIV,
37 and the only way to know if one is HIV-positive is to get tested.

38 (8) Information about local resources, how to access local
39 resources, and pupils' legal rights to access local resources for
40 sexual and reproductive health care such as testing and medical

1 care for HIV and other sexually transmitted infections and
2 pregnancy prevention and care, as well as local resources for
3 assistance with sexual assault and intimate partner violence.

4 (9) Information about the effectiveness and safety of all
5 FDA-approved contraceptive methods in preventing pregnancy,
6 including, but not limited to, emergency contraception. Instruction
7 on pregnancy shall include an objective discussion of all legally
8 available pregnancy outcomes, including, but not limited to, all of
9 the following:

10 (A) Parenting, adoption, and abortion.

11 (B) Information on the law on surrendering physical custody
12 of a minor child 72 hours of age or younger, pursuant to Section
13 1255.7 of the Health and Safety Code and Section 271.5 of the
14 Penal Code.

15 (C) The importance of prenatal care.

16 (10) Information about sexual harassment, sexual assault,
17 adolescent relationship abuse, intimate partner violence, and sex
18 trafficking.

19 (11) Information about sexting, including, but not limited to,
20 all of the following:

21 (A) The legal consequences and penalties for sharing sexually
22 suggestive or explicit materials, including, but not limited to,
23 applicable federal and state statutes.

24 (B) The nonlegal consequences of sharing sexually suggestive
25 or explicit materials, including, but not limited to, the effect on
26 relationships, loss of educational and employment opportunities,
27 and being barred or removed from school programs and
28 extracurricular activities.

29 (C) The potential, based upon the unique characteristics of
30 cyberspace and the Internet, of long-term and unforeseen
31 consequences for sharing sexually suggestive or explicit materials.
32 *materials, and the importance of safe and responsible use of*
33 *technology in identifying and reducing unhealthy sexual behaviors*
34 *such as sexting.*

35 (D) The possible connection between bullying and
36 ~~cyber-bullying~~ *cyberbullying* and pupils sharing sexually suggestive
37 or explicit materials.

38 (b) A school district may provide comprehensive sexual health
39 education and HIV prevention education consisting of
40 age-appropriate instruction earlier than grade 7 using instructors

1 trained in the appropriate courses. A school district that elects to
2 offer comprehensive sexual health education and HIV prevention
3 education earlier than grade 7 may provide age appropriate and
4 medically accurate information on any of the general topics
5 contained in paragraphs (1) to (11), inclusive, of subdivision (a).

6 (c) For purposes of this section, “sexting” means sending or
7 receiving sexually explicit messages, images, or videos by means
8 of an electronic communication.

9 ~~SEC. 3.~~

10 *SEC. 4.* If the Commission on State Mandates determines that
11 this act contains costs mandated by the state, reimbursement to
12 local agencies and school districts for those costs shall be made
13 pursuant to Part 7 (commencing with Section 17500) of Division
14 4 of Title 2 of the Government Code.