

## Assembly Bill No. 2153

### CHAPTER 882

An act to add Section 1417.8 to the Penal Code, relating to criminal procedure.

[Approved by Governor September 24, 1996. Filed  
with Secretary of State September 25, 1996.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 2153, Kuehl. Harmful matter: photographs of minors.

Existing law requires the clerk of the court to retain all exhibits that have been introduced or filed in a criminal proceeding and to establish a procedure to account for the exhibits properly until the final determination of the proceeding.

Existing law also defines harmful matter as matter which, taken as a whole, to the average person, applying contemporary statewide standards, appeals to the prurient interest, and which, taken as a whole, depicts or describes in a patently offensive way sexual conduct and lacks serious literary, artistic, political, or scientific value for minors.

This bill would provide that a photograph of a minor that is harmful matter introduced or filed as an exhibit in specified criminal proceedings shall be available only to the parties or to a person named in a court order to receive it prior to the final determination of the proceeding. The bill would provide that after the final determination of the proceeding, the photograph shall be preserved with the permanent record maintained by the court, that no person shall have access to the photograph without a court order, and that any copy, negative, reprint, or other duplication of the photograph shall be delivered to the clerk for disposal. By increasing the duties of court personnel, this 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

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.

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

SECTION 1. Section 1417.8 is added to the Penal Code, to read:

1417.8. (a) Notwithstanding any other provision of this chapter, any photograph of any minor that is harmful matter, as defined in Section 313, and introduced or filed as an exhibit in any criminal proceeding specified in subdivision (b) shall be handled as follows:

(1) Prior to the final determination of the action or proceeding, the photograph shall be available only to the parties or to a person named in a court order to receive the photograph.

(2) After the final determination of the action or proceeding, the photograph shall be preserved with the permanent record maintained by the clerk of the court. The photograph may be disposed of or destroyed after preservation through any appropriate photographic or electronic medium. If the photograph is disposed of, it shall be rendered unidentifiable before such disposal. No person shall have access to the photograph unless that person has been named in a court order to receive the photograph. Any copy, negative, reprint, or other duplication of the photograph in the possession of the state, a state agency, the defendant, or an agent of the defendant, shall be delivered to the clerk of the court for disposal whether or not the defendant was convicted of the offense.

(b) The procedure provided by subdivision (a) shall apply to actions listed under subparagraph (A) of paragraph (2) of subdivision (a) of Section 290, and to actions under the following provisions:

(1) Section 261.5.

(2) Section 272.

(3) Chapter 7.5 (commencing with Section 311) of Title 9 of Part 1.

(4) Chapter 7.6 (commencing with Section 313) of Title 9 of Part 1.

(c) For the purposes of this section, “photograph” means any photographic image contained in a digital format or on any chemical, mechanical, magnetic, or electronic medium.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative



on the same date that the act takes effect pursuant to the California Constitution.

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