

ASSEMBLY BILL

No. 33

Introduced by Assembly Member Sharon Runner

December 6, 2004

An act to amend Section 272 of the Penal Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

AB 33, as introduced, Sharon Runner. Contact with minor.

Existing law provides that it is a crime for an adult stranger to contact or communicate with a minor, 12 years of age or younger, who the adult knew or should have known was 12 years of age or younger, to lure him or her away, as specified, for any purpose. Existing law provides that this crime is punishable by a fine, by imprisonment in a county jail, or by both.

This bill would prohibit this conduct when engaged in with a person who is 16 years of age or younger. This bill would provide that this crime is punishable by imprisonment in a county jail and a fine of no less than \$2,500, but no more than \$5,000. This bill would also provide that if the defendant used a computer to communicate with the victim and has been convicted of an offense that requires him or her to register as a sex offender or has obscene matter stored on that computer that violates provisions prohibiting possession of matter depicting a minor engaging in or simulating sexual conduct, the computer is subject to forfeiture. Because this bill would change the definition of a crime, it 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.

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 272 of the Penal Code is amended to
2 read:

3 272. (a) (1) Every person who commits any act or omits the
4 performance of any duty, which act or omission causes or tends
5 to cause or encourage any person under the age of 18 years to
6 come within the provisions of Section 300, 601, or 602 of the
7 Welfare and Institutions Code or which act or omission
8 contributes thereto, or any person who, by any act or omission, or
9 by threats, commands, or persuasion, induces or endeavors to
10 induce any person under the age of 18 years or any ward or
11 dependent child of the juvenile court to fail or refuse to conform
12 to a lawful order of the juvenile court, or to do or to perform any
13 act or to follow any course of conduct or to so live as would
14 cause or manifestly tend to cause that person to become or to
15 remain a person within the provisions of Section 300, 601, or 602
16 of the Welfare and Institutions Code, is guilty of a misdemeanor
17 and upon conviction thereof shall be punished by a fine not
18 exceeding two thousand five hundred dollars (\$2,500), or by
19 imprisonment in the county jail for not more than one year, or by
20 both fine and imprisonment in a county jail, or may be released
21 on probation for a period not exceeding five years.

22 (2) For purposes of this subdivision, a parent or legal guardian
23 to any person under the age of 18 years shall have the duty to
24 exercise reasonable care, supervision, protection, and control
25 over their minor child.

26 (b) (1) An adult stranger who is 21 years of age or older, who
27 knowingly contacts or communicates with a minor who is ~~12~~ 16
28 years of age or younger, who knew or reasonably should have
29 known that the minor is ~~12~~ 16 years of age or younger, for the
30 purpose of persuading and luring, or transporting, or attempting
31 to persuade and lure, or transport, that minor away from the
32 minor's home or from any location known by the minor's parent,
33 legal guardian, or custodian, to be a place where the minor is

1 located, for any purpose, without the express consent of the
2 minor’s parent or legal guardian, and with the intent to avoid the
3 consent of the minor’s parent or legal guardian, is guilty of ~~an~~
4 ~~infraction or a misdemeanor~~ *a crime punishable by imprisonment*
5 *in a county jail for a period not exceeding six months and a fine*
6 *of not less than two thousand five hundred dollars (\$2,500), but*
7 *no more than five thousand dollars (\$5,000).*

8 (2) This subdivision shall not apply in an emergency situation.

9 (3) As used in this subdivision, the following terms are
10 defined to mean:

11 (A) “Emergency situation” means a situation where the minor
12 is threatened with imminent bodily harm, emotional harm, or
13 psychological harm.

14 (B) “Contact” or “communication” includes, but is not limited
15 to, the use of a telephone or the Internet, as defined in Section
16 17538 of the Business and Professions Code.

17 (C) “Stranger” means a person of casual acquaintance with
18 whom no substantial relationship exists, or an individual with
19 whom a relationship has been established or promoted for the
20 primary purpose of victimization, as defined in subdivision (e) of
21 Section 6600 of the Welfare and Institutions Code.

22 (D) “Express consent” means oral or written permission that is
23 positive, direct, and unequivocal, requiring no inference or
24 implication to supply its meaning.

25 (4) This section shall not be interpreted to criminalize acts of
26 persons contacting minors within the scope and course of their
27 employment, or status as a volunteer of a recognized civic or
28 charitable organization.

29 (5) This section is intended to protect minors and to help
30 parents and legal guardians exercise reasonable care, supervision,
31 protection, and control over minor children.

32 (6) *If the defendant used a computer to communicate with the*
33 *victim via the Internet and has previously been convicted of any*
34 *offense listed in paragraph (2) of subdivision (a) of Section 290*
35 *or has obscene matter stored on that computer that violates*
36 *subdivision (a) of Section 311.11, the computer is subject to*
37 *forfeiture to the Department of Justice. Proceedings for forfeiture*
38 *shall be initiated by a petition of forfeiture filed in the Superior*
39 *Court in which the matter is located.*

1 (7) *Fines collected pursuant to this subdivision shall be*
2 *transferred by the county treasurer to the Controller for deposit*
3 *into the General Fund and, upon appropriation by the*
4 *Legislature to the Department of Justice, used in implementing*
5 *the provisions of Section 290.*

6 SEC. 2. No reimbursement is required by this act pursuant to
7 Section 6 of Article XIII B of the California Constitution because
8 the only costs that may be incurred by a local agency or school
9 district will be incurred because this act creates a new crime or
10 infraction, eliminates a crime or infraction, or changes the
11 penalty for a crime or infraction, within the meaning of Section
12 17556 of the Government Code, or changes the definition of a
13 crime within the meaning of Section 6 of Article XIII B of the
14 California Constitution.