

ASSEMBLY BILL

No. 1873

Introduced by Assembly Member Sanchez

January 22, 2024

An act to amend Section 311.3 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL’S DIGEST

AB 1873, as introduced, Sanchez. Crimes: sexual exploitation of a child.

Under existing law, a person is guilty of sexual exploitation of a child if the person knowingly develops, duplicates, prints, or exchanges any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip that depicts a person under 18 years of age engaged in an act of sexual conduct, as defined. Existing law makes a violation of this section punishable as a misdemeanor or a felony, as specified.

This bill would additionally make a person guilty of a misdemeanor or a felony if the person knowingly develops, duplicates, prints, or exchanges any representation of information, data, or image, generated using artificial intelligence, that depicts a person under the age of 18 years engaged in an act of sexual conduct, as specified. By expanding the scope of a crime, 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.

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 311.3 of the Penal Code is amended to
2 read:

3 311.3. (a) (1) A person is guilty of sexual exploitation of a
4 child if ~~he or she~~ *the person* knowingly develops, duplicates, prints,
5 or exchanges any representation of information, data, or image,
6 including, but not limited to, any film, filmstrip, photograph,
7 negative, slide, photocopy, videotape, video laser disc, computer
8 hardware, computer software, computer floppy disc, data storage
9 media, CD-ROM, or computer-generated equipment or any other
10 computer-generated image that contains or incorporates in any
11 manner, any film or filmstrip that depicts a person under the age
12 of 18 years engaged in an act of sexual conduct.

13 (2) *A person is guilty of sexual exploitation of a child if the*
14 *person knowingly develops, duplicates, prints, or exchanges any*
15 *representation of information, data, or image, generated using*
16 *artificial intelligence that depicts a person under the age of 18*
17 *years engaged in an act of sexual conduct.*

18 (b) As used in this section, ~~“sexual conduct” means any of the~~
19 ~~following;~~ *the following definitions apply:*

20 (1) *“Artificial intelligence” means a machine-based system that*
21 *can, from a given set of human-defined objectives, make a virtual*
22 *output.*

23 (2) *“Sexual conduct” means any of the following:*

24 (1)

25 (A) Sexual intercourse, including genital-genital, oral-genital,
26 anal-genital, or oral-anal, whether between persons of the same or
27 opposite sex or between humans and animals.

28 (2)

29 (B) Penetration of the vagina or rectum by any object.

30 (3)

1 (C) Masturbation for the purpose of sexual stimulation of the
2 viewer.

3 ~~(4)~~

4 (D) Sadomasochistic abuse for the purpose of sexual stimulation
5 of the viewer.

6 ~~(5)~~

7 (E) Exhibition of the genitals or the pubic or rectal area of any
8 person for the purpose of sexual stimulation of the viewer.

9 ~~(6)~~

10 (F) Defecation or urination for the purpose of sexual stimulation
11 of the viewer.

12 (c) Subdivision (a) does not apply to the activities of law
13 enforcement and prosecution agencies in the investigation and
14 prosecution of criminal offenses or to legitimate medical, scientific,
15 or educational activities, or to lawful conduct between spouses.

16 (d) Every person who violates subdivision (a) shall be punished
17 by a fine of not more than two thousand dollars (\$2,000) or by
18 imprisonment in a county jail for not more than one year, or by
19 both that fine and imprisonment. If the person has been previously
20 convicted of a violation of subdivision (a) or any section of this
21 chapter, ~~he or she~~ *they* shall be punished by imprisonment in the
22 state prison.

23 (e) The provisions of this section do not apply to an employee
24 of a commercial film developer who is acting within the scope of
25 ~~his or her~~ *their* employment and in accordance with the instructions
26 of ~~his or her~~ *their* employer, provided that the employee has no
27 financial interest in the commercial developer by which ~~he or she~~
28 *is they are* employed.

29 (f) Subdivision (a) does not apply to matter that is unsolicited
30 and is received without knowledge or consent through a facility,
31 system, or network over which the person or entity has no control.

32 SEC. 2. No reimbursement is required by this act pursuant to
33 Section 6 of Article XIII B of the California Constitution because
34 the only costs that may be incurred by a local agency or school
35 district will be incurred because this act creates a new crime or
36 infraction, eliminates a crime or infraction, or changes the penalty
37 for a crime or infraction, within the meaning of Section 17556 of
38 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

O