

Senate Bill No. 1381

CHAPTER 929

An act to amend Sections 311.1, 311.3, 311.4 and, 312.3 of the Penal Code, relating to crimes.

[Approved by Governor September 29, 2024. Filed with
Secretary of State September 29, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1381, Wahab. Crimes: child pornography.

Existing law prohibits the production, development, duplication, distribution, or possession, as specified, of matter, in specified formats, that depicts a person under 18 years of age engaging in or simulating sexual conduct, as defined. Existing law separately prohibits this conduct where it is done for consideration or where such matter is shared with a minor.

Existing law also prohibits the employment or use of a minor, or the permitting by a parent or guardian of the employment or use of a minor for the production of such matter. Existing law authorizes the forfeiture and destruction of such matter regardless of whether a conviction is sought or obtained.

This bill would expand the scope of certain of these provisions to include matter that is digitally altered or generated by the use of artificial intelligence, as such matter is defined.

By expanding the scope of an existing 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.

This bill would become operative only if AB 1831 of the 2023–24 Regular Session is enacted and takes effect on or before January 1, 2025.

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

SECTION 1. Section 311.1 of the Penal Code is amended to read:

311.1. (a) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints 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, filmstrip, or any digitally altered or artificial-intelligence-generated matter, with intent to distribute or to exhibit to, or to exchange with, others, or who offers to distribute, distributes, or exhibits to, or exchanges with, others, any obscene matter, knowing that the matter depicts a person under 18 years of age, or contains digitally altered or artificial-intelligence-generated data depicting what appears to be a person under 18 years of age, engaging in or simulating sexual conduct, as defined in Section 311.4, shall be punished either by imprisonment in the county jail for up to one year, by a fine not to exceed one thousand dollars (\$1,000), or by both the fine and imprisonment, or by imprisonment in the state prison, by a fine not to exceed ten thousand dollars (\$10,000), or by the fine and imprisonment.

(b) This section does not apply to the activities of law enforcement and prosecuting agencies in the investigation and prosecution of criminal offenses or to legitimate medical, scientific, or educational activities, or to lawful conduct between spouses.

(c) This section does not apply to matter that depicts a child under 18 years of age when the child is legally emancipated, including lawful conduct between spouses when one or both are under 18 years of age.

(d) It does not constitute a violation of this section for a telephone corporation, as defined by Section 234 of the Public Utilities Code, to carry or transmit messages described in this chapter or perform related activities in providing telephone services.

SEC. 2. Section 311.3 of the Penal Code is amended to read:

311.3. (a) A person is guilty of sexual exploitation of a child if that 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, filmstrip, or any digitally altered or artificial-intelligence-generated matter that depicts a person under 18 years of age engaged in an act of sexual conduct.

(b) It is not necessary to prove that the matter is obscene in order to establish a violation of subdivision (a).

(c) As used in this section, "sexual conduct" means any of the following:

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

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

(3) Masturbation for the purpose of sexual stimulation of the viewer.

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

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

(6) Defecation or urination for the purpose of sexual stimulation of the viewer.

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

(e) Every person who violates subdivision (a) shall be punished by a fine of not more than two thousand dollars (\$2,000) or by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment. If the person has been previously convicted of a violation of subdivision (a) or any section of this chapter, the person shall be punished by imprisonment in the state prison.

(f) The provisions of this section do not apply to an employee of a commercial film developer who is acting within the scope of employment and in accordance with the instructions of their employer, provided that the employee has no financial interest in the commercial developer by which they are employed.

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

SEC. 3. Section 311.4 of the Penal Code is amended to read:

311.4. (a) Every person who, with knowledge that a person is a minor, or who, while in possession of any facts on the basis of which they should reasonably know that the person is a minor, hires, employs, or uses the minor to do or assist in doing any of the acts described in Section 311.2, shall be punished by imprisonment in the county jail for up to one year, or by a fine not exceeding two thousand dollars (\$2,000), or by both that fine and imprisonment, or by imprisonment in the state prison. If the person has previously been convicted of any violation of this section, the court may, in addition to the punishment authorized in Section 311.9, impose a fine not exceeding fifty thousand dollars (\$50,000).

(b) Every person who, with knowledge that a person is a minor under 18 years of age, or who, while in possession of any facts on the basis of which they should reasonably know that the person is a minor under 18 years of age, knowingly promotes, employs, uses, persuades, induces, or coerces a minor under 18 years of age, or any parent or guardian of a minor under 18 years of age who is under their control who knowingly permits the minor, to engage in or assist others to engage in either posing or modeling alone or with others for purposes of preparing 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, filmstrip, digitally altered or artificial-intelligence-generated matter, or live performance,

involving sexual conduct by a minor under 18 years of age alone or with other persons or animals, for commercial purposes, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.

(c) Every person who, with knowledge that a person is a minor under 18 years of age, or who, while in possession of any facts on the basis of which they should reasonably know that the person is a minor under 18 years of age, knowingly promotes, employs, uses, persuades, induces, or coerces a minor under 18 years of age, or any parent or guardian of a minor under 18 years of age who is under their control who knowingly permits the minor, to engage in or assist others to engage in either posing or modeling alone or with others for purposes of preparing 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, filmstrip, digitally altered or artificial-intelligence-generated matter, or live performance, involving sexual conduct by a minor under 18 years of age alone or with other persons or animals, is guilty of a felony. It is not necessary to prove commercial purposes in order to establish a violation of this subdivision.

(d) As used in subdivisions (b) and (c), “sexual conduct” means any of the following, whether actual or simulated: sexual intercourse, oral copulation, anal intercourse, anal oral copulation, masturbation, bestiality, sexual sadism, sexual masochism, penetration of the vagina or rectum by any object in a lewd or lascivious manner, exhibition of the genitals or pubic or rectal area for the purpose of sexual stimulation of the viewer, any lewd or lascivious sexual act as defined in Section 288, or excretory functions performed in a lewd or lascivious manner, whether or not any of the above conduct is performed alone or between members of the same or opposite sex or between humans and animals. An act is simulated when it gives the appearance of being sexual conduct.

(e) This section does not apply to a legally emancipated minor or to lawful conduct between spouses if one or both are under 18 years of age.

(f) In every prosecution under this section involving a minor under 14 years of age at the time of the offense, the age of the victim shall be pled and proven for the purpose of the enhanced penalty provided in Section 647.6. Failure to plead and prove that the victim was under 14 years of age at the time of the offense is not a bar to prosecution under this section if it is proven that the victim was under 18 years of age at the time of the offense.

SEC. 4. Section 312.3 of the Penal Code is amended to read:

312.3. (a) Matter that depicts a person under 18 years of age engaging in or simulating sexual conduct as defined in Section 311.4 and that is in the possession of any city, county, city and county, or state official or agency is subject to forfeiture pursuant to this section.

(b) An action to forfeit matter described in subdivision (a) may be brought by the Attorney General, the district attorney, county counsel, or the city

attorney. Proceedings shall be initiated by a petition of forfeiture filed in the superior court of the county in which the matter is located.

(c) The prosecuting agency shall make service of process of a notice regarding that petition upon every individual who may have a property interest in the alleged proceeds. The notice shall state that any interested party may file a verified claim with the superior court stating the amount of their claimed interest and an affirmation or denial of the prosecuting agency's allegation. If the notice cannot be given by registered mail or personal delivery, the notice shall be published for at least three successive weeks in a newspaper of general circulation in the county where the property is located. All notices shall set forth the time within which a claim of interest in the property seized is required to be filed.

(d) (1) Any person claiming an interest in the property or proceeds may, at any time within 30 days from the date of the first publication of the notice of seizure, or within 30 days after receipt of actual notice, file with the superior court of the county in which the action is pending a verified claim stating their interest in the property or proceeds. A verified copy of the claim shall be given by the claimant to the Attorney General or district attorney, county counsel, or city attorney, as appropriate.

(2) If, at the end of the time set forth in paragraph (1), an interested person has not filed a claim, the court, upon motion, shall declare that the person has defaulted upon their alleged interest, and it shall be subject to forfeiture upon proof of compliance with subdivision (c).

(e) The burden is on the petitioner to prove beyond a reasonable doubt that matter is subject to forfeiture pursuant to this section.

(f) It is not necessary to seek or obtain a criminal conviction prior to the entry of an order for the destruction of matter or obscene matter pursuant to this section. Any matter described in subdivision (a) that is in the possession of any city, county, city and county, or state official or agency, including found property, or property obtained as the result of a case in which no trial was had or that has been disposed of by way of dismissal or otherwise than by way of conviction may be ordered destroyed.

(g) A court order for destruction of matter or obscene matter described in subdivision (a) may be carried out by a police or sheriff's department or by the Department of Justice. The court order shall specify the agency responsible for the destruction.

(h) As used in this section, "matter" means any book, magazine, newspaper, or other printed or written material or any picture, drawing, photograph, motion picture, or other pictorial representation, or any statue or other figure, or any recording, transcription or mechanical, chemical or electrical reproduction, or any other articles, equipment, machines, or materials. "Matter" also means 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, filmstrip, or digitally altered or artificial-intelligence-generated matter.

(i) This section does not apply to a depiction of a legally emancipated minor or to lawful conduct between spouses if one or both are under 18 years of age.

(j) It is a defense in any forfeiture proceeding that the matter or obscene matter seized was lawfully possessed in aid of legitimate scientific or educational purposes.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 6. This act shall become operative only if Assembly Bill 1831 of the 2023–24 Regular Session is enacted and takes effect on or before January 1, 2025.