

Introduced by Senator Alquist

February 5, 2007

An act to amend Section 311.4 of the Penal Code, relating to criminal sentencing, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 172, as introduced, Alquist. Crimes: sentencing: sex offenders.

Existing law describes the punishment for a person who uses a minor to possess or transport obscene matter with the intent to distribute the obscene matter in two separate sections of codified law.

This bill would eliminate the description of the punishment from one of the sections of codified law.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

- 1 SECTION 1. (a) It is the intent of the Legislature, in enacting
- 2 Section 2 of this act, to avoid duplicative references to penalties
- 3 and to make clear that the penalty for violation subdivision (a) of
- 4 Section 311.4 of the Penal Code is set forth in subdivision (b) of
- 5 Section 311.9 of the Penal Code.
- 6 (b) This act shall not be construed to do any of the following:
- 7 (1) Repeal the duty of persons convicted of violating Section
- 8 311.4 of the Penal Code to register pursuant to Section 290 of the
- 9 Penal Code.

1 (2) Forgive or legalize any conduct prohibited by Section 311.4
2 or Section 311.9 of the Penal Code, as either of those sections read
3 prior to the enactment of this act.

4 (3) Void or make voidable or render invalid any conviction for
5 violation of Sections 311.4 or 311.9 of the Penal Code, as those
6 sections read prior to the enactment of this act.

7 (4) Bar any prosecution for violation of Section 311.4 or 311.9
8 of the Penal Code as those sections read prior to the enactment of
9 this act.

10 SEC. 2. Section 311.4 of the Penal Code is amended to read:

11 311.4. (a) Every person who, with knowledge that a person is
12 a minor, or who, while in possession of any facts on the basis of
13 which he or she should reasonably know that the person is a minor,
14 hires, employs, or uses the minor to do or assist in doing any of
15 the acts described in Section 311.2, shall be punished—by
16 imprisonment in the county jail for up to one year, or by a fine not
17 exceeding two thousand dollars (\$2,000), or by both that fine and
18 imprisonment, or by imprisonment in the state prison *as specified*
19 *in Section 311.9*. If the person has previously been convicted of
20 any violation of this section, the court may, in addition to the
21 punishment authorized in Section 311.9, impose a fine not
22 exceeding fifty thousand dollars (\$50,000).

23 (b) Every person who, with knowledge that a person is a minor
24 under the age of 18 years, or who, while in possession of any facts
25 on the basis of which he or she should reasonably know that the
26 person is a minor under the age of 18 years, knowingly promotes,
27 employs, uses, persuades, induces, or coerces a minor under the
28 age of 18 years, or any parent or guardian of a minor under the
29 age of 18 years under his or her control who knowingly permits
30 the minor, to engage in or assist others to engage in either posing
31 or modeling alone or with others for purposes of preparing any
32 representation of information, data, or image, including, but not
33 limited to, any film, filmstrip, photograph, negative, slide,
34 photocopy, videotape, video laser disc, computer hardware,
35 computer software, computer floppy disc, data storage media,
36 CD-ROM, or computer-generated equipment or any other
37 computer-generated image that contains or incorporates in any
38 manner, any film, filmstrip, or a live performance involving, sexual
39 conduct by a minor under the age of 18 years alone or with other
40 persons or animals, for commercial purposes, is guilty of a felony

1 and shall be punished by imprisonment in the state prison for three,
2 six, or eight years.

3 (c) Every person who, with knowledge that a person is a minor
4 under the age of 18 years, or who, while in possession of any facts
5 on the basis of which he or she should reasonably know that the
6 person is a minor under the age of 18 years, knowingly promotes,
7 employs, uses, persuades, induces, or coerces a minor under the
8 age of 18 years, or any parent or guardian of a minor under the
9 age of 18 years under his or her control who knowingly permits
10 the minor, to engage in or assist others to engage in either posing
11 or modeling alone or with others for purposes of preparing any
12 representation of information, data, or image, including, but not
13 limited to, any film, filmstrip, photograph, negative, slide,
14 photocopy, videotape, video laser disc, computer hardware,
15 computer software, computer floppy disc, data storage media,
16 CD-ROM, or computer-generated equipment or any other
17 computer-generated image that contains or incorporates in any
18 manner, any film, filmstrip, or a live performance involving, sexual
19 conduct by a minor under the age of 18 years alone or with other
20 persons or animals, is guilty of a felony. It is not necessary to prove
21 commercial purposes in order to establish a violation of this
22 subdivision.

23 (d) (1) As used in subdivisions (b) and (c), “sexual conduct”
24 means any of the following, whether actual or simulated: sexual
25 intercourse, oral copulation, anal intercourse, anal oral copulation,
26 masturbation, bestiality, sexual sadism, sexual masochism,
27 penetration of the vagina or rectum by any object in a lewd or
28 lascivious manner, exhibition of the genitals or pubic or rectal area
29 for the purpose of sexual stimulation of the viewer, any lewd or
30 lascivious sexual act as defined in Section 288, or excretory
31 functions performed in a lewd or lascivious manner, whether or
32 not any of the above conduct is performed alone or between
33 members of the same or opposite sex or between humans and
34 animals. An act is simulated when it gives the appearance of being
35 sexual conduct.

36 (2) As used in subdivisions (b) and (c), “matter” means any
37 film, filmstrip, photograph, negative, slide, photocopy, videotape,
38 video laser disc, computer hardware, computer software, computer
39 floppy disc, or any other computer-related equipment or
40 computer-generated image that contains or incorporates in any

1 manner, any film, filmstrip, photograph, negative, slide, photocopy,
2 videotape, or video laser disc.

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

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

13 SEC. 3. This act is an urgency statute necessary for the
14 immediate preservation of the public peace, health, or safety within
15 the meaning of Article IV of the Constitution and shall go into
16 immediate effect. The facts constituting the necessity are:

17 The existence of duplicative sentencing provisions for the
18 violation of criminal laws prohibiting the use of minors to transport
19 or possess obscene matter with the intent to distribute the obscene
20 matter necessitates that this act be given immediate effect.