

Date of Hearing: June 23, 2026
Counsel: Kimberly Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Nick Schultz, Chair

SB 1276 (Rubio) – As Introduced February 20, 2026

SUMMARY: Expands the crime of sexual exploitation of a child to include downloading, streaming, or accessing through electronic or digital media specified depictions of a minor engaged in an act of sexual conduct. Specifically, **this bill:**

- 1) Expands the crime of sexual exploitation of a child to apply to anyone who downloads, streams, or accesses through electronic or digital media any representation of information, data, or image, as specified above, that depicts a person under 18 years of age engaged in an act of sexual conduct.
- 2) Specifies that the crime of sexual exploitation of a child does not apply to a child under 18 years of age alleged to have solely engaged in viewing sexual conduct through a video stream.
- 3) Expands the definition of “sexual exploitation” for the purposes of the Child Abuse and Neglect Reporting Act (CANRA) to include a person who depicts a child in, or who knowingly develops, duplicates, prints, downloads, streams, accesses through any electronic or digital media, or exchanges digitally altered or artificial-intelligence-generated matter that depicts a person under 18 years of age engaged in an act of sexual conduct.

EXISTING LAW:

- 1) Prohibits, except as provided, the act of knowingly sending or causing to be sent, or bringing or causing to be brought, into this state for sale or distribution, or possessing, preparing, publishing, producing, developing, duplicating, or printing in this state any representation of information, data, or image, including, but not limited to specified media, 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 offering to distribute, distributing, or exhibiting to, or exchanging 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, and is punishable as an alternate-felony-misdemeanor. (Pen. Code, § 311.1, subd. (a).)
- 2) Prohibits the act of knowingly sending or causing to be sent, or bringing or causing to be brought, into this state for sale or distribution, or possessing, preparing, publishing, producing, developing, duplicating, or printing in this state, with intent to distribute or exhibit to others, or offering to distribute, distributing, exhibiting to others any obscene matter, punishable as a misdemeanor. (Pen. Code, § 311.2, subd. (a).)

- 3) Provides that 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 specified media 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 for commercial consideration, or who offers to distribute, distributes, or exhibits to, or exchanges with, others for commercial consideration, any obscene matter, knowing that the matter depicts a person under 18 years of age personally engaging in or personally simulating sexual conduct or that it contains a digitally altered or artificial-intelligence-generated depiction of what appears to be a person under 18 years of age engaging in such conduct is guilty of a felony. (Pen. Code, § 311.2, subd. (b).)
- 4) Provides that 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 specified media 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 exhibit to, or to exchange with, a person 18 years of age or older, or who offers to distribute, distributes, or exhibits to, or exchanges with, a person 18 years of age or older any matter, knowing that the matter depicts a person under 18 years of age personally engaging in or personally simulating sexual conduct, or any obscene matter that contains a digitally altered or artificial-intelligence-generated depiction of what appears to be a person under 18 years of age engaging in such conduct, shall be guilty of a crime, punishable as a wobbler. (Pen. Code, § 311.2, subd. (c).)
- 5) Prohibits knowingly sending or causing to be sent, or bringing or causing to be brought, into this state for sale or distribution, or possessing, preparing, publishing, producing, developing, duplicating, or printing in this state any representation of information, data, or image, including specified media 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 exhibit to, or to exchange with, a person under 18 years of age, or offering to distribute, distributing, or exhibiting to, or exchanging with, a person under 18 years of age any matter, knowing that the matter depicts a person under 18 years of age personally engaging in or personally simulating sexual conduct, or any obscene matter that contains a digitally altered or artificial-intelligence-generated depiction of what appears to be a person under 18 years of age engaging in such conduct, punishable as a felony. (Pen. Code, § 311.2, subd. (d).)
- 6) Provides that 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 specified media 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. (Pen. Code, § 311.4, subd. (c).)

- 7) Provides that 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 (Compact Disc Read-Only Memory), 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, punishable as a misdemeanor for a first offense and as a felony for any second or subsequent offense. (Pen. Code, § 311.3, subd. (a).)
- 8) Specifies that it is not necessary to prove that the matter is obscene in order to establish the violation above. (Pen. Code, § 311.3, subd. (b).)
- 9) Provides that the crime of sexual exploitation of a child does not apply to law enforcement and prosecution agencies, to legitimate medical, scientific, or education activities, or to lawful conduct between spouses. (Pen. Code, § 311.3, subd. (d).)
- 10) For the purposes of the crime of sexual exploitation of a child, defines “sexual conduct” as any of several enumerated sexual acts. (Pen. Code, § 311.3, subd. (c).)
- 11) Establishes CANRA which is generally intended to protect children from abuse and neglect with a focus on the needs of the victim. (Pen. Code, § 11164.)
- 12) Defines “neglect” under CANRA as the negligent treatment or the maltreatment of a child by a person responsible for the child’s welfare under circumstances indicating harm or threatened harm to the child’s health or welfare. The term includes both acts and omissions on the part of the responsible reporting person. (Pen. Code, § 11165.2)
- 13) Defines “severe neglect” under CANRA as the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. “Severe neglect” also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as specified, including the intentional failure to provide adequate food, clothing, shelter, or medical care. (Pen. Code, § 11165.2, subd. (a).)
- 14) Defines “child abuse or neglect” under CANRA to include physical injury or death inflicted by other than accidental means upon a child by another person, sexual abuse as defined, neglect as defined, the willful harming or injuring of a child or the endangering of the person or health of a child as defined, and unlawful corporal punishment or injury. “Child abuse or neglect” does not include a mutual affair between minors. “Child abuse or neglect” does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer. (Pen. Code, § 11165.6.)

- 15) Requires any mandated reporter who has knowledge of or observes a child, their professional capacity or within the scope of their employment whom they know, or reasonably suspect has been the victim of child abuse or neglect, to report it as specified, to any police or sheriff's department, a county probation department if designated by the county to receive mandated reports, or the county welfare department. (Pen. Code, §§ 11166, subd. (a), 11165.9.)
- 16) For the purposes of CANRA, specifies that "sexual abuse" means sexual assault or sexual exploitation as defined by the following:
- a) "Sexual assault" means illegal sexual conduct as defined in several specified sections of the Penal Code, including provisions criminalizing rape, statutory rape, rape in concert, incest, sodomy, oral copulation, lewd or lascivious acts upon a child, sexual penetration, or child molestation, as specified.
 - b) "Sexual exploitation" refers to the following:
 - i. Conduct involving matter depicting a minor engaged in obscene acts in violation of the existing prohibition against preparing, selling or distributing obscene matter (Pen. Code, § 311.2) or against the employment of a minor to perform obscene acts (Pen. Code, § 311.4).
 - ii. A person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or a person responsible for a child's welfare, who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or a live performance involving obscene sexual conduct, or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, drawing, painting, or other pictorial depiction, involving obscene sexual conduct. For the purpose of this provision, "person responsible for a child's welfare" means a parent, guardian, foster parent, or a licensed administrator or employee of a public or private residential home, residential school, or other residential institution.
 - iii. A person who depicts a child in, or who knowingly develops, duplicates, prints, downloads, streams, accesses through any electronic or digital media, or exchanges, a film, photograph, videotape, video recording, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except as provided. (Pen. Code, § 11165.1.)
- 17) Mandates the appropriate local law enforcement agency investigate a child abuse complaint filed by a parent or guardian of a pupil with a school or an agency, as specified, against a school employee or other person that commits an act of child abuse, as defined in this article, against a pupil at a school site and shall transmit a substantiated report, as defined, of that investigation to the governing board of the appropriate school district or county office of education.

COMMENTS:

- 1) **Sponsor:** Los Angeles City Attorney
- 2) **Author's Statement:** According to the author, “Every child deserves to be safe and California law must reflect that without exception. As technology evolves, so do the methods predators use to exploit children. Livestreaming platforms and AI-generated content have created dangerous new loopholes that bad actors are actively using to harm minors, and our current laws have not kept pace. SB 1276, the End Child Exploitation Act, closes those loopholes once and for all. This bill amends the Penal Code to make clear that knowingly watching a livestream of a minor engaged in sexual conduct is a crime, full stop. It also updates the definition of sexual exploitation to specifically include AI-generated and digitally altered images or videos that depict minors in sexual acts.

“The technology may be new, but the harm is just as real, and the law should treat it that way. No technicality should stand between a child and justice. No predator should escape accountability simply because they exploited a gap in the law. SB 1276 sends an unambiguous message: California will not tolerate the sexual exploitation of children in any form. I am proud to author this bill and call on my colleagues to stand with California's children. Protecting the most vulnerable among us is not a partisan issue, it is a moral obligation.”

- 3) **Sexual Exploitation of a Child:** Existing law criminalizes the production, viewing, creation, downloading, or transfer of child sexual assault material (CSAM) (formerly referred to as child pornography). In 2024, criminal penalties around CSAM were updated to include AI-generated or digitized material that scrapes the internet and dark web for images of real children and generates them into CSAM.¹ This bill seeks to include any person who downloads, streams, or access through electronic digital media in the definition of sexual exploitation.

Penal Code section 311.3 was added in 1981. The U.S. Supreme Court ruled in *New York v. Ferber* (1982) 458 U.S. 747 that “the exploitive use of children in the production of pornography has become a serious national problem [...] the prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance.” (*Id.*, 458 U.S. at 757.) The *Ferber* court held that CSAM was not entitled to First Amendment protection, and the New York statute was not vague or overbroad. (*Id.* at p. 773.)

The court in *In re Duncan* in holding that our child exploitation statute is not unconstitutional, explained the purpose of Penal Code section 311.3 as follows:

To protect children from sexual abuse and invasion of their privacy rights through the development and duplication of photographs, movies and video tapes depicting them engaged in sexual conduct. Legally incapable of consent, these children are

¹ See AB 1831 (Berman), Chapter 926, Statutes of 2024; SB 1381 (Wahab), Chapter 929, Statutes of 2024.

perpetually exploited, first by the original performance of these acts; then by the creation of a permanent record of the conduct; again, each time that record is reproduced; and then again when that photograph, film or video tape is viewed or passed on to another. In addition, these materials are used to induce *other* children to engage in sexual activity... The legislative history of section 311.3 reveals this provision was designed ‘to deter pedophiles from exchanging pictures of minors and to prevent child molesters from using pictures of minors engaged in sexual conduct to suggest to their victims that such acts are acceptable.’ (*In re Duncan* (1987) 189 Cal.App.3d 1348, 1358-59.)

Section 311.3 is either punishable by up to one year in the county jail or, if the defendant has a prior conviction for child exploitation, up to three years in state prison. A felony conviction for Penal Code section 311.3 is subject to lifetime sex offender registration. (Pen. Code, § 290, subd. (d)(3)(R).)

The sections of the Penal Code criminalizing possession, distribution, exhibition, and production of CSAM pertain to what used to be called “obscenity” statutes that “protected public decency and good morals.” However, obscenity, as that term was used when most of these statutes were drafted has been mostly abandoned by the U.S. Supreme Court for anything other than CSAM. (Schauer, *Out of Range: on Patently Uncovered Speech* (2015) 128 Harv. L.Rev. F. 346, 349; see *United States v. Stevens* (2010) 559 U.S. 460, 480. However, even at its inception, Penal Code section 311.3 expressly stated that a prosecutor need not demonstrate “obscenity” to prove a charge of sexual exploitation. (Pen. Code, § 311.3, subd. (b).)

- 4) **CSAM and AI:** In 2024, AB 1831 (Berman) Chapter 926 and later, SB 1381 (Wahab) Chapter 929 updated sections 311.1 through 312.3 to include digital and AI-generated material. In 2002, the Supreme Court struck down the Child Pornography Prevention Act of 1996’s ban on sexually explicit images that appeared to depict minors, but were not produced using minors, unconstitutionally proscribed protected speech. (See *Ashcroft v. Free Speech Coalition* (2002) 535 U.S. 234, *superseded by statute* in the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act (“PROTECT Act”). See Pub. L. No. 108-21 (April 30, 2003), § 502(a)(1), (a)(3); 18 U.S.C. § 2256(8)(B).) As explained by contributions in the congressional record:

Currently prosecution of the possession of child sexual abuse material (CSAM) and related crimes, requires proof that the material in question depicts a real child. However, advances in AI and computer technology have made it possible, cheap, and easy to create highly realistic deepfake content, including CSAM. For example, websites available to the general public offer services that modify images of real people, including children, to make them appear nude. Other websites will generate artificial images of children in any position or situation the user demands. The images are often so realistic that the human eye cannot tell they are fake.

Numerous free applications utilize generative AI technology to produce images and videos of humans that appear real. There are many sites that provide free “text-to-image” services that allow a user to generate an image (or series of images) based upon text input. Some of these services include Dall-E, Midjourney, and Kasper Art. With minimal input, a user can produce images of humans that appear to be real. This includes material that could involve children.

These results demonstrate the simplicity of the process for producing lifelike images of hypothetically “fictional” persons in realistic settings using a mobile device with no programming skills. Countless AI-image generating services not only allow the generation of nude, not-safe-for-work, or underage imagery, but actually market themselves for that ability.

Many of these services have basic free plans, but also paid plans that allow for more censor-free content generation. These services are not on the dark web, but within the open internet for anyone – including children – to find. The wide availability and use of technology in this way is deeply troubling for a number of reasons. For example, as CSAM becomes more readily available, and simultaneously more difficult to prosecute, CSAM consumers will be able to view more volume and more explicit content than before. Viewers of CSAM can then become desensitized, they will seek more harmful materials and eventually are likely to escalate their conduct to physical child sexual abuse.

Before an artificially intelligent program is utilized to create something, it needs to be taught what it is going to produce and how it is going to produce it. AI can learn to recognize and understand images through a process known as image recognition or computer vision. Image recognition occurs by analyzing data and identifying patterns or rules that it needs to follow. For example, by showing a computer dozens of images of cats and dogs, over time it will develop a generalized idea of what a cat and what a dog should look like. When shown an image, the computer should then have information to make an intelligent assumption of what kind of animal is shown. If the amount of training data provided to the AI program is increased, the accuracy of what the AI program produces should also increase.²

² See Federal Bureau of Investigation, Internet Crime Complaint Center, March 2024 <https://www.ic3.gov/PSA/2024/PSA240329> <https://enoughabuse.org/get-vocal/laws-by-state/state-laws-criminalizing-ai-generated-or-computer-edited-child-sexual-abuse-material-csam/>; chrome-extension://efaidnbmninnibpcjpcglclefindmkaj/https://www.justice.gov/d9/2023-06/child_sexual_abuse_material_2.pdf

As noted above, California updated its CSAM statutes to include digital and AI-generated images of children because the evidence demonstrates such images rely on photos of actual children and may demonstrate a propensity for criminal sexual conduct with children.

- 5) **Child Pornography:** Possession or distribution of child pornography is punishable as either a misdemeanor or felony, and in some cases, may be a state prison felony.³ Penal Code section 311.2, subdivision (a) criminalizes distribution or exhibition of obscene material, including child pornography, and requires a maximum sentence of one year in state prison. Additionally, Penal Code section 311.2 may be charged per image and, in some case, aggregated to increase the total sentence. (*People v. Haraszewski* (2012) 203 Cal.App.4th 924.) Penal Code section 311.2, subdivision (b) punishes exhibition or distribution of child pornography for commercial consideration as a felony subject to a maximum of six years in state prison. (Pen. Code, § 290, subd. (c).)

Penal Code section 311.2, subdivision (c) punishes exhibition or distribution of obscene matter to another person 18 and over knowing the material depicts a minor engaged in sexual conduct, may be sentenced to a maximum of 1 year in state prison. Penal Code section 311.2 subdivision (d) punishes distribution of obscene matter, including child pornography, to a person under the age of 18, by up to one year in county jail, or three years in state prison.

Penal Code section 311.3 criminalizes “sexual exploitation of a child” meaning knowingly developing or printing child pornography, as specified, and may be punished by up to one year in the county jail. (Pen. Code, § 311.3, subd. (d).) Penal Code section 311.4, subdivision (a) punishes knowingly employing a minor to distribute obscenity or pornography, as specified, and is subject to a punishment of up to one year in state prison. Penal Code section 311.11, subdivision (a) criminalizes possession of child pornography which is mostly punishable as a felony.

Penal Code section 311.3 criminalizes a person who knowingly develops, duplicates, or otherwise disseminates CSAM, including any digitally altered or artificial-intelligence-generated matter. A person must intentionally generate the material knowing a person is underage. As the court in *Duncan* pointed out:

The legislative history of section 311.3 reveals that this provision was designed ‘to deter pedophiles from exchanging pictures of minors and to prevent child molesters from using pictures of minors engaged in sexual conduct to suggest to their victims that such acts are acceptable.’ (Rep. of the Sen. Com. on Jud. on Sen. Bill No. 331 (1981-1982 Reg. Sess.) p. 2.)” (*Duncan, supra*, 189 Cal.App.3d at 1359.)

As noted above, this bill adds any person who knowingly downloads, or accesses through electronic or digital media depicting a person under the age of 18 engaged in sexually explicit conduct. Since this is not the same as knowingly transmitting material, it is not clear

³ See fn. 1, *supra*. As noted, these laws have not been amended in nearly 20 years and require felony defendants to serve their sentence in state prison – rather than county jail, when not otherwise specified. In this case, many of the offenses are straight felonies – meaning that short of additional statutory language, they are subject to a state prison sentence.

whether the intent requirement applies just to a person who knowingly streams sexually explicit conduct and also knows it is CSAM. Since the term “streaming” is more passive on apps like TikTok and Insta Reels, and terms such as “develop, duplicate, print, or exchange” are more active, the author may wish to clarify whether it intends to criminalize a person who intends to stream on TikTok or Reels, but not intentionally to view CSAM.

- 6) **CANRA:** In addition to adding downloading and streaming through an electronic or digital media to the child exploitation statute, this bill also adds digital, and AI generated images to the definition of sexual exploitation in CANRA. CANRA was enacted in 1980 for the purpose of protecting children from abuse and neglect, which it seeks to accomplish via a comprehensive reporting scheme aimed toward increasing the likelihood that child abuse victims will be identified. CANRA requires persons in positions where abuse is likely to be detected – known as “mandated reporters” – to promptly report all suspected and known instances of child abuse and neglect to the relevant authorities, and identifies nearly 50 separate categories of mandated reporters, including teachers, school employees, doctors, athletic coaches, police officers, firefighters, social workers, and persons whose duties require direct contact with and supervision of minors, among many others.

A mandated reporter must make a report when they have knowledge of or observe a child whom the mandated reporter knows, or reasonably suspects is or has been the victim of child abuse or neglect.

For the purposes of CANRA, “child abuse or neglect” is defined to include physical injury or death inflicted by other than accidental means upon a child by another person, sexual abuse as defined, neglect as defined, the willful harming or injuring of a child or the endangering of the person or health of a child as defined, and unlawful corporal punishment or injury as defined.

CANRA defines “sexual abuse” broadly, both by reference to existing crimes and by establishing definitions for “sexual assault” and “sexual exploitation,” both of which fall under the ambit of “sexual abuse.” Since the duty to report is triggered by the nature of the material or conduct and not the ability to identify a specific victim or perpetrator, the bill requires mandated reporters to report any knowledge or reasonable suspicion of digitally altered or artificial intelligence generated matter that depicts a person under 18 engaged in sexually explicit conduct, including AI or digitally generated images.

- 7) **Argument in Support:** According to *American Association of University Women*, “Developing, printing, or exchanging sexual content of a minor under 18 is considered sexual exploitation under the Child Abuse and Neglect Reporting Act. This includes material in any form, such as film, photographs, videotapes, computer hardware/software, data storage, or any other digital media. However, possessing these items does not fall under sexual exploitation. Artificial intelligence-generated sexual content of minors is also not included in the current definition.

“SB 1276 would make it a crime to possess any depiction of a person under 18 engaged in an act of sexual conduct via download, stream, or access through electronic or digital media. The bill also expands the definition of sexual exploitation under the Child Abuse and Neglect Reporting Act to include any digitally altered or AI-generated content depicting a person under 18. As the digital landscape evolves, we must be responsive to effectively protect

children from sexual exploitation SB 1276 is an important piece of legislation that helps meet this ongoing and urgent need.”

- 8) **Argument in Opposition:** According to *California Attorneys for Criminal Justice*, “Child pornography is morally repugnant. However, what makes child pornography criminal—and why possession and distribution of child pornography is punished so severely (including potential lifetime sex registration)—is not the immorality of the content. The central basis of the criminality of child pornography is the victimization of actual children in its creation. For instance, if consenting adults dress up as children and pretend to be children for the purposes of sexual roleplay or creation of pornography, this behavior is not considered illegal, even if many would deem such behavior highly offensive and morally repugnant. And virtual child pornography, to the extent it does not involve the depiction and victimization of actual children, similarly is not categorically criminal, and in fact implicates the First Amendment.

“The United States Supreme Court struck down a federal law banning virtual child pornography for precisely this reason. (See *Ashcroft v. Free Speech Coalition* (2002) 535 U.S. 234.) As the high court explained, in contrast to the child pornography at issue in *New York v. Ferber* (1982) 458 U. S. 747—a form of speech that was itself a record of sexual abuse—the federal law banning virtual child pornography “prohibits speech that records no crime and creates no victims by its production. Virtual child pornography is not ‘intrinsically related’ to the sexual abuse of children, as were the materials in *Ferber*.” (Ashcroft, supra, 535 U.S. at p. 234.) Applying some of these principles, California Courts have held that a defendant’s act in placing pictures of child’s head on nude bodies of adult women was insufficient to support conviction for possession of child pornography, as these pictures did not involve sexual exploitation of an actual child. (*People v. Gerber* (2011) 196 Cal.App.4th 368, 377.)

“The problem with SB 1276 is that it modifies the definition of “sexual exploitation” in a way that criminalizes the creation of content that is produced, not as the result of the victimization of actual children, but through artificial intelligence. While the bill language does require the depiction of an actual person – as opposed to the recent amendments to Section 311.11, which criminalize content that depicts what appears to be a person under 18 – as drafted the bill would violate the First Amendment, because it does not require the victimization of an actual child in the production of computer-generated content.

“In *Gerber*, the defendant challenged his conviction under Section 311.11(a) on the grounds that the content he possessed had been created using Microsoft Paint, by replacing his minor daughter’s face on pornographic images of women he had downloaded from the Internet. Citing *Ashcroft*, the *Gerber* court found such images are protected by the First Amendment. In so holding the court found “that the articulated rationales underlying both the *Ferber* and *Free Speech Coalition* decisions compel the conclusion that such altered materials are closer to virtual child pornography than to real child pornography since the use of photo editing software to replace an adult's head with a child's head on pornographic images of the adult does not necessarily involve sexual exploitation of an actual child.” (*Gerber*, supra, 196 Cal.App.4th at p. 386.)

“The amendments to section 11165.1 that SB 1276 proposes raise the same concerns. To pass constitutional muster, the statute would need to limit application of the prohibition of “digitally altered to artificial-intelligence-generated matter” to instances where a child is

victimized, not circumstances like those in Gerber, where the computer-generated image depicts part of a real child, but the sexual-conduct aspect of the image is computer-generated and did not involve an actual child in its creation.

“As a society, we should focus our criminal laws on behavior which harms actual victims, and not on severe punishments based on whether a person has deviant sexual interests. Sexual exploitation of real children is simply not the same as virtual content created by artificial intelligence, no matter how offensive that content may be.”

- 9) **Related Legislation:** SB 1015 (Strickland) would make it a wobbler for any adult to recruit, induce, coerce or persuade a minor to commit an illegal act against another minor, or to solicit physical harm, sexual conduct, or images of an intimate body part, from another minor, as specified, and expands the crime of extortion to apply to minors in cases where the minor has knowingly threatened, intimidated or coerced another minor to engage in any sexual conduct or obtain an image of an intimate body part from another minor, as specified. SB 1015 is pending hearing in this committee.

10) **Prior Legislation:**

- a) AB 1831 (Berman), Chapter 926, Statutes of 2024, expanded the scope of certain provisions related to child pornography and obscene matter to include digitally altered or AI-generated matter, as provided.
- b) SB 1381 (Wahab), Chapter 929, Statutes of 2024, expanded the scope of certain provisions related to child pornography to include digitally altered or AI-generated matter that depicts a person under 18 years of age engaged in sexual conduct, as provided.

REGISTERED SUPPORT / OPPOSITION:

Support

American Association of University Women - California
California District Attorneys Association
California Family Resource Association
California State Sheriffs' Association
California Teachers Association
Child Abuse Prevention Center and its Affiliates Safe Kids California, Prevent Child Abuse
California and the California Family Resource Association; the
City of Sunnyvale
Los Angeles County District Attorney's Office
Sistahfriends
Strength United
The California Baptist Capitol Ministry

Opposition

California Attorneys for Criminal Justice

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