

SENATE THIRD READING
SB 1276 (Rubio)
As Amended August 13, 2026
Majority vote

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.

Major Provisions

- 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 knowing that the matter depicts a person under the age of 18 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.
- 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.

COMMENTS

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."

Arguments 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."

Arguments 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."

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 1) Non-reimbursable local incarceration costs of an unknown amount for additional convictions. A first violation is punishable by a fine of not more than \$2,000, by imprisonment in a county jail for not more than one year, or both. A person previously convicted of a violation of that subdivision or any section of the same chapter is punishable by imprisonment in the state prison. Actual costs will depend on the number of convictions and the length of each sentence. The average annual cost to incarcerate one person in county jail is approximately \$29,000, though costs are higher in larger counties. County incarceration costs are not subject to reimbursement by the state. However, overcrowding in county jails creates cost pressure on the General Fund (GF) because the state has historically granted new funding to counties to offset overcrowding resulting from public safety realignment.
- 2) Increased state incarceration costs of an unknown amount (GF) to the California Department of Corrections and Rehabilitation (CDCR) to the extent additional persons with qualifying prior convictions are committed to state prison. The Legislative Analyst's Office estimates the average annual cost to incarcerate one person in state prison at \$128,000; CDCR estimates \$135,921. If two people are incarcerated in state prison as a result of this crime's expansion, the resulting incarceration costs to CDCR would exceed this committee's suspense threshold.
- 3) Potential court cost pressures of an unknown amount (Trial Court Trust Fund (TCTF), GF) to adjudicate additional charges. The conduct reached by this bill — downloading, streaming, and accessing — is substantially more common than the development, duplication, printing, and exchange the statute currently reaches, so the number of chargeable violations could

increase. Actual costs will depend on the number of charges filed and the time needed to adjudicate each case. Although courts are not funded on the basis of workload, increased pressure on the TCTF may create a demand for increased funding for courts from the GF. The state budget provides annual GF backfills to the TCTF to offset revenue reductions, totaling approximately \$117.3 million in 2025-26.

VOTES

SENATE FLOOR: 33-0-7

YES: Archuleta, Arreguín, Ashby, Blakespear, Cabaldon, Caballero, Cervantes, Choi, Cortese, Dahle, Durazo, Gonzalez, Grayson, Grove, Jones, Laird, Limón, McGuire, McNerney, Menjivar, Ochoa Bogh, Pérez, Reyes, Richardson, Rubio, Seyarto, Smallwood-Cuevas, Strickland, Umberg, Valladares, Wahab, Weber Pierson, Wiener

ABS, ABST OR NV: Allen, Alvarado-Gil, Becker, Hurtado, Niello, Padilla, Stern

ASM PUBLIC SAFETY: 9-0-0

YES: Schultz, Alanis, Mark González, Haney, Harabedian, Lackey, Nguyen, Ramos, Sharp-Collins

ASM PRIVACY AND CONSUMER PROTECTION: 15-0-0

YES: Bauer-Kahan, Macedo, Bryan, DeMaio, Hoover, Irwin, Lowenthal, McKinnor, Ortega, Patterson, Pellerin, Petrie-Norris, Ward, Bennett, Wilson

ASM APPROPRIATIONS: 11-0-4

YES: Wicks, Arambula, Calderon, Caloza, Fong, Mark González, Krell, Pacheco, Pellerin, Sharp-Collins, Solache

ABS, ABST OR NV: Hoover, Dixon, Ta, Tangipa

UPDATED

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