

AMENDED IN SENATE JUNE 11, 2013

AMENDED IN SENATE MAY 29, 2013

AMENDED IN ASSEMBLY FEBRUARY 25, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 20

Introduced by Assembly Member Waldron
(Coauthor: Assembly Member Wilk)
(Coauthors: Senators Anderson, Block, Fuller, and Knight)

December 3, 2012

An act to amend Section 1203.4 of, and to add Section 311.12 to, the Penal Code, relating to obscene matter.

LEGISLATIVE COUNSEL'S DIGEST

AB 20, as amended, Waldron. Obscene matter: minors.

Existing law generally prohibits the production, distribution, and production of any representation of information, data, or image, as specified, of any obscene matter that depicts a person under 18 years of age personally engaging in or personally simulating sexual conduct, as defined. Violations of these provisions are crimes.

This bill would provide that every person who is convicted of a violation of specified offenses relating to obscene matter involving minors, as specified, in which the violation is committed on, or via, a government-owned computer or via a government-owned computer network, or in which the production, transportation, or distribution of which involves the use, possession, or control of government-owned property shall, in addition to any imprisonment or fine imposed for the commission of the underlying offense, be punished by a fine not exceeding \$2,000, unless the court determines that the defendant does

not have the ability to pay. The bill would provide that revenue from any fines collected would be transferred for deposit into a county fund established for that purpose and allocated for sexual assault investigator training, ~~high technology crime task forces~~, public agencies and nonprofit corporations that provide shelter, counseling, or other direct services for victims of human trafficking, and multidisciplinary teams involved in the prosecution of child abuse cases, as specified.

Existing law allows for the release from all penalties and disabilities resulting from an offense for which the person was convicted if specified criteria are met. Existing law excludes certain sex offenses from these provisions.

This bill would additionally exclude specified offenses relating to obscene matter involving minors from these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

1 SECTION 1. Section 311.12 is added to the Penal Code, to
2 read:

3 311.12. (a) (1) Every person who is convicted of a violation
4 of Section 311.1, 311.2, 311.3, 311.10, or 311.11 in which the
5 offense involves the production, use, possession, control, or
6 advertising of matter or image that depicts a person under 18 years
7 of age personally engaging in or simulating sexual conduct, as
8 defined in subdivision (d) of Section 311.4, in which the violation
9 is committed on, or via, a government-owned computer or via a
10 government-owned computer network, shall, in addition to any
11 imprisonment or fine imposed for the commission of the underlying
12 offense, be punished by a fine not exceeding two thousand dollars
13 (\$2,000), unless the court determines that the defendant does not
14 have the ability to pay.

15 (2) Every person who is convicted of a violation of Section
16 311.1, 311.2, 311.3, 311.10, or 311.11 in which the offense
17 involves the production, use, possession, control, or advertising
18 of matter or image that depicts a person under 18 years of age
19 personally engaging in or simulating sexual conduct, as defined
20 in subdivision (d) of Section 311.4, in which the production,
21 transportation, or distribution of which involves the use, possession,
22 or control of government-owned property shall, in addition to any

1 imprisonment or fine imposed for the commission of the underlying
2 offense, be punished by a fine not exceeding two thousand dollars
3 (\$2,000), unless the court determines that the defendant does not
4 have the ability to pay.

5 (b) The fines in subdivision (a) shall not be subject to the
6 provisions of Sections 70372, 76000, 76000.5, and 76104.6 of the
7 Government Code, or Sections 1464 and 1465.7 of this code.

8 (c) Revenue from any fines collected pursuant to this section
9 shall be deposited into a county fund established for that purpose
10 and allocated as follows, and a county may transfer all or part of
11 any of those allocations to another county for the allocated use:

12 (1) ~~Twenty-five percent~~ *One-third* for sexual assault investigator
13 training.

14 (2) ~~Twenty-five percent for high technology crime task forces.~~

15 (3) ~~Twenty-five percent~~

16 (2) *One-third* for public agencies and nonprofit corporations
17 that provide shelter, counseling, or other direct services for victims
18 of human trafficking.

19 (4) ~~Twenty-five percent~~

20 (3) *One-third* for multidisciplinary teams.

21 (d) As used in this section:

22 (1) “Computer” includes any computer hardware, computer
23 software, computer floppy disk, data storage medium, or CD-ROM.

24 (2) “Government-owned” includes property and networks owned
25 or operated by state government, city government, city and county
26 government, county government, a public library, or a public
27 college or university.

28 (3) “Multidisciplinary teams” means a child-focused,
29 facility-based program in which representatives from many
30 disciplines, including law enforcement, child protection,
31 prosecution, medical and mental health, and victim and child
32 advocacy work together to conduct interviews and make team
33 decisions about the investigation, treatment, management, and
34 prosecution of child abuse cases, including child sexual abuse
35 cases. It is the intent of the Legislature that this multidisciplinary
36 team approach will protect victims of child abuse from multiple
37 interviews, result in a more complete understanding of case issues,
38 and provide the most effective child and family-focused system
39 response possible.

1 (e) Nothing in this section shall be construed to require any
2 government or government entity to retain data in violation of any
3 provision of state or federal law.

4 SEC. 2. Section 1203.4 of the Penal Code is amended to read:

5 1203.4. (a) (1) In any case in which a defendant has fulfilled
6 the conditions of probation for the entire period of probation, or
7 has been discharged prior to the termination of the period of
8 probation, or in any other case in which a court, in its discretion
9 and the interests of justice, determines that a defendant should be
10 granted the relief available under this section, the defendant shall,
11 at any time after the termination of the period of probation, if he
12 or she is not then serving a sentence for any offense, on probation
13 for any offense, or charged with the commission of any offense,
14 be permitted by the court to withdraw his or her plea of guilty or
15 plea of nolo contendere and enter a plea of not guilty; or, if he or
16 she has been convicted after a plea of not guilty, the court shall
17 set aside the verdict of guilty; and, in either case, the court shall
18 thereupon dismiss the accusations or information against the
19 defendant and except as noted below, he or she shall thereafter be
20 released from all penalties and disabilities resulting from the
21 offense of which he or she has been convicted, except as provided
22 in Section 13555 of the Vehicle Code. The probationer shall be
23 informed, in his or her probation papers, of this right and privilege
24 and his or her right, if any, to petition for a certificate of
25 rehabilitation and pardon. The probationer may make the
26 application and change of plea in person or by attorney, or by the
27 probation officer authorized in writing. However, in any subsequent
28 prosecution of the defendant for any other offense, the prior
29 conviction may be pleaded and proved and shall have the same
30 effect as if probation had not been granted or the accusation or
31 information dismissed. The order shall state, and the probationer
32 shall be informed, that the order does not relieve him or her of the
33 obligation to disclose the conviction in response to any direct
34 question contained in any questionnaire or application for public
35 office, for licensure by any state or local agency, or for contracting
36 with the California State Lottery Commission.

37 (2) Dismissal of an accusation or information pursuant to this
38 section does not permit a person to own, possess, or have in his or
39 her custody or control any firearm or prevent his or her conviction

1 under Chapter 2 (commencing with Section 29800) of Division 9
2 of Title 4 of Part 6.

3 (3) Dismissal of an accusation or information underlying a
4 conviction pursuant to this section does not permit a person
5 prohibited from holding public office as a result of that conviction
6 to hold public office.

7 (4) This subdivision shall apply to all applications for relief
8 under this section which are filed on or after November 23, 1970.

9 (b) Subdivision (a) of this section does not apply to any
10 misdemeanor that is within the provisions of Section 42002.1 of
11 the Vehicle Code, to any violation of subdivision (c) of Section
12 286, Section 288, subdivision (c) of Section 288a, Section 288.5,
13 subdivision (j) of Section 289, Section 311.1, 311.2, 311.3, or
14 311.11, or any felony conviction pursuant to subdivision (d) of
15 Section 261.5, or to any infraction.

16 (c) (1) Except as provided in paragraph (2), subdivision (a)
17 does not apply to a person who receives a notice to appear or is
18 otherwise charged with a violation of an offense described in
19 subdivisions (a) to (e), inclusive, of Section 12810 of the Vehicle
20 Code.

21 (2) If a defendant who was convicted of a violation listed in
22 paragraph (1) petitions the court, the court in its discretion and in
23 the interests of justice, may order the relief provided pursuant to
24 subdivision (a) to that defendant.

25 (d) A person who petitions for a change of plea or setting aside
26 of a verdict under this section may be required to reimburse the
27 court for the actual costs of services rendered, whether or not the
28 petition is granted and the records are sealed or expunged, at a rate
29 to be determined by the court not to exceed one hundred fifty
30 dollars (\$150), and to reimburse the county for the actual costs of
31 services rendered, whether or not the petition is granted and the
32 records are sealed or expunged, at a rate to be determined by the
33 county board of supervisors not to exceed one hundred fifty dollars
34 (\$150), and to reimburse any city for the actual costs of services
35 rendered, whether or not the petition is granted and the records are
36 sealed or expunged, at a rate to be determined by the city council
37 not to exceed one hundred fifty dollars (\$150). Ability to make
38 this reimbursement shall be determined by the court using the
39 standards set forth in paragraph (2) of subdivision (g) of Section
40 987.8 and shall not be a prerequisite to a person's eligibility under

1 this section. The court may order reimbursement in any case in
2 which the petitioner appears to have the ability to pay, without
3 undue hardship, all or any portion of the costs for services
4 established pursuant to this subdivision.

5 (e) (1) Relief shall not be granted under this section unless the
6 prosecuting attorney has been given 15 days' notice of the petition
7 for relief. The probation officer shall notify the prosecuting attorney
8 when a petition is filed, pursuant to this section.

9 (2) It shall be presumed that the prosecuting attorney has
10 received notice if proof of service is filed with the court.

11 (f) If, after receiving notice pursuant to subdivision (e), the
12 prosecuting attorney fails to appear and object to a petition for
13 dismissal, the prosecuting attorney may not move to set aside or
14 otherwise appeal the grant of that petition.

15 (g) Notwithstanding the above provisions or any other provision
16 of law, the Governor shall have the right to pardon a person
17 convicted of a violation of subdivision (c) of Section 286, Section
18 288, subdivision (c) of Section 288a, Section 288.5, or subdivision
19 (j) of Section 289, if there are extraordinary circumstances.