
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Jesse Arreguín, Chair
2025 - 2026 Regular

Bill No: AB 528 **Hearing Date:** July 1, 2025
Author: Alanis
Version: February 11, 2025
Urgency: No **Fiscal:** Yes
Consultant: CA

Subject: *Criminal procedure: child pornography*

HISTORY

Source: Author

Prior Legislation: AB 1439 (La Suer), failed in Assembly Public Safety, 2004
SB 877 (Hollingsworth), Ch. 238, Stats. of 2003

Support: Arcadia Police Officers' Association; Brea Police Association; Burbank Police Officers' Association; California Association of School Police Chiefs; California Coalition of School Safety Professionals; California Narcotic Officers' Association; California Police Chiefs Association; California Reserve Peace Officers Association; California State Sheriffs' Association; Claremont Police Officers Association; Corona Police Officers Association; Culver City Police Officers' Association; Fullerton Police Officers' Association; Los Angeles School Police Management Association; Los Angeles School Police Officers Association; Murrieta Police Officers' Association; Newport Beach Police Association; Palos Verdes Police Officers Association; Placer County Deputy Sheriffs' Association; Pomona Police Officers' Association; Riverside Police Officers Association; Riverside Sheriffs' Association

Opposition: ACLU California Action; California Public Defenders Association (CPDA); Ella Baker Center for Human Rights; Initiate Justice; Justice2jobs Coalition; LA Defensa; San Francisco Public Defender

Assembly Floor Vote: 76 - 0

PURPOSE

The purpose of this bill is to repeal and revise criminal discovery rules for child pornography evidence, eliminating the defense's ability to request copies for good cause.

Existing federal law requires, in any criminal proceeding, any property or material that constitutes child pornography to remain in the care, custody, and control of either the Government or the court. (18 U.S.C, § 3509, subd. (m)(1).)

Existing federal law requires a court in any criminal proceeding to deny any request by the defendant to copy, photograph, duplicate, or otherwise reproduce any property or material that

constitutes child pornography so long as the Government makes the property or material reasonably available to the defendant. (18 U.S.C. § 3509, subd. (m)(2)(A).)

Existing federal law defines “reasonably available” as meaning the Government provides ample opportunity for inspection, viewing, and examination at a Government facility of the property or material by the defendant, his or her attorney, and any potential defense expert witness. (18 U.S.C. § 3509, subd. (m)(2)(B).)

Existing federal law provides that in any criminal proceeding, a victim shall have reasonable access to any property or material that constitutes child pornography depicting the victim, for inspection, viewing, and examination at a Government facility or court, by the victim, his or her attorney, and any individual the victim may seek to qualify to furnish expert testimony, but under no circumstances may such child pornography be copied, photographed, duplicated, or otherwise reproduced. Such property or material may be redacted to protect the privacy of third parties. (18 U.S.C. § 3509, subd. (m)(3).)

Existing federal law defines “child pornography” as any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where:

- The production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;
- Such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; or,
- Such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct. (18 U.S.C. § 2256, subd. (2)(B)(8).)

Existing federal law defines “victim” as the individual harmed as a result of a commission of a sexual exploitation and other abuse of children crime. In the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim’s estate, another family member, or any other person appointed as suitable by the court, may assume the crime victim’s rights, but in no event shall the defendant be named as such representative or guardian. (18 U.S.C. § 2259, subd. (c)(4).)

Existing law prohibits any attorney from disclosing or permitting to be disclosed to a defendant, members of the defendant’s family, or anyone else copies of child pornography evidence, unless specifically permitted to do so by the court after a hearing and a showing of good cause. (Pen. Code, § 1054.10, subd. (a).)

Existing law provides that an attorney may disclose or permit to be disclosed copies of child pornography evidence to persons employed by the attorney or to persons appointed by the court to assist in the preparation of a defendant’s case if that disclosure is required for that preparation. Persons provided this material by an attorney shall be informed by the attorney that further dissemination of the material is prohibited. (Pen. Code, § 1054.10, subd. (b).)

Existing law states no order requiring discovery shall be made in criminal cases except as provided in the discovery rules. The discovery rules shall be the only means by which the

defendant may compel the disclosure or production of information from prosecuting attorneys, law enforcement agencies which investigated or prepared the case against the defendant, or any other persons or agencies which the prosecuting attorney or investigating agency may have employed to assist them in performing their duties. (Pen. Code, § 1054.5, subd. (a).)

Existing law provides that disclosures required under the discovery rules shall be made at least 30 days prior to the trial, unless good cause is shown why a disclosure should be denied, restricted, or deferred. If the material and information becomes known to, or comes into the possession of, a party within 30 days of trial, disclosure shall be made immediately, unless good cause is shown why a disclosure should be denied, restricted, or deferred. (Pen. Code, § 1054.7.)

Existing law defines “good cause” for purposes of the discovery rules as threats or possible danger to the safety of a victim or witness, possible loss or destruction of evidence, or possible compromise of other investigations by law enforcement. (Pen. Code, § 1054.7.)

Existing law prohibits any prosecuting attorney, attorney for the defendant, or investigator for either the prosecution or the defendant from interviewing, questioning, or speaking to a victim or witness whose name has been disclosed by the opposing party pursuant to the discovery rules without first clearly identifying themselves, identifying the full name of the agency by whom they are employed, and identifying whether they represent or have been retained by, the prosecution or the defendant. If the interview takes place in person, the party shall also show the victim or witness a business card, official badge, or other form of official identification before commencing the interview or questioning. (Pen. Code, § 1054.8, subd. (a).)

This bill repeals existing standards for disclosure of copies of child pornography evidence at trial that allows for disclosure of copies to a defendant, defense attorney or person employed by the defense attorney for good cause.

This bill requires that in any criminal proceeding, any material that constitutes child pornography, and any hardware, media, or other property containing, storing, or housing that material, remain in the care, custody, and control of either a law enforcement agency, the prosecution, or the court.

This bill provides that in any criminal proceeding, a court shall deny any request by the defendant, their attorney, anybody employed by the defendant, or anybody else, to copy, photograph, duplicate, or otherwise reproduce any material that constitutes child pornography so long as the prosecution makes the material, and any hardware, media, or other property containing, storing, or housing that material, reasonably available to the defendant.

This bill provides that the above discovery items shall be deemed to be reasonably available to the defendant if the prosecution provides ample opportunity for the inspection, viewing, and examination of that material at the prosecution’s office, a law enforcement agency facility, or court facility by the defendant, the defendant’s attorney, and any individual the defendant may seek to qualify to furnish expert testimony at trial.

This bill requires that in any criminal proceeding, a victim, as defined, and the victim’s attorney or any individual the victim may seek to qualify to furnish expert testimony, have reasonable access to any material that constitutes child pornography depicting the victim, for inspection, viewing, and examination at the prosecution’s office, a law enforcement agency facility, or court facility. However, under no circumstances may material that constitutes child pornography be

copied, photographed, duplicated, or otherwise reproduced. This property or material may be redacted to protect the privacy of third parties.

This bill incorporates by reference the federal definition of “child pornography.”

This bill incorporates by reference the federal definition of “victim.”

COMMENTS

1. Need for This Bill

According to the author:

While federal law prohibits the removal and duplication of child pornography evidence, California state law still permits judges to order copies and removal of this material from secure locations. In February 2025, Solano County Sheriff’s Office deputies seized over 120 terabytes of child pornography from a residence in Vallejo, California—an extreme case where the sheer volume, equivalent to 10,000–50,000 hours of standard-quality video, highlights how easily an individual can amass such content. Although the full composition of the seized material remains unknown, its scale demonstrates the accessibility of photos and videos depicting the sexual abuse and exploitation of children, enabled by electronic devices and online platforms. If a single person can acquire and potentially trade tens of thousands of hours of this material, the state arguably bears a responsibility to ensure all such evidence remains secure upon discovery, preventing further trauma to the children depicted through unnecessary copying or removal from protected locations. AB 528 seeks to address this by aligning with the federal standard and ensuring that documented evidence of their abuse stays secure, never reprinted or duplicated.

2. Prosecution Duty to Disclose All Relevant Evidence and Discovery Limitations under Penal Code Section 1054.10

The prosecution is required to disclose to the defense all relevant real evidence seized or obtained as part of the investigation of the charged offenses, if the prosecution possesses it or knows that an investigating agency possesses it. (Pen. Code, § 1054.1; see *In re Brown* (1998) 17 Cal.4th 873; *In re Littlefield* (1993) 5 Cal.4th 122, 135.) If evidence in the prosecution’s possession is not disclosed following an informal request, the defense must seek access of the evidence through a motion. (*Walters v. Superior Court* (2000) 80 Cal.App.4th 1074, 1079.)

However, Penal Code section 1054.10 limits the discovery of child pornography evidence. It prohibits both the prosecuting attorney and defense attorney from disclosing copies of child pornography evidence to the defendant or anyone else unless the court expressly permits the attorney to do so and only after a hearing and showing of good cause. (Pen. Code, § 1054.10, subd. (a).)

That being said, an attorney may disclose copies of this evidence to a person employed by the attorney or appointed by the court to assist in preparation of the defendant’s case if the disclosure is required for that preparation. However, the attorney is required to inform the

person that any further dissemination is prohibited, except as directed by the attorney or the court. (Pen. Code, § 1054.10, subd. (b).)

This bill eliminates the court's ability to provide a defendant with copies of child pornography evidence upon a showing of good cause. Instead, the bill requires this evidence be stored in the offices of a prosecutor, law enforcement agency, or court, and requires the defense team be provided with "reasonable access" to the evidence there. Any request by the defendant, their attorney, or anybody else to copy or duplicate the evidence is prohibited under the bill so long as the evidence is made "reasonably available" to the defendant. "Reasonably available" under the bill means "ample opportunity" to inspect, view, and examine the evidence at the prosecution's office, the law enforcement agency, or the court by the defendant, their attorney, or any individual they seek to qualify as an expert. As described in more detail below, these changes conform to current federal law regarding this type of evidence in criminal proceedings.

3. Federal Law and the Adam Walsh Act of 2006

The Adam Walsh Act was enacted and signed into law in 2006 as an expansion of the Jacob Wetterling Act of 1994; it significantly increased penalties for sex crimes against children and the possession or dissemination of child pornography. (See 34 U.S.C. § 20910, *et seq.*; 18 U.S.C. § 3500, *et seq.*) It also expanded obligations to create a sex offender registry and require sex offender registration in all 50 states. Finally, it made multiple changes to criminal discovery statutes in child pornography cases. 18 U.S.C. § 3509, subdivision (m) states, in part:

a court shall deny, in any criminal proceeding, any request by the defendant to copy, photograph, duplicate, or otherwise reproduce any property or material that constitutes child pornography (as defined by section 2256 of this title [18 USC § 2256]), so long as the Government makes the property or material reasonably available to the defendant. (18 U.S.C. § 3509, subd. (m)(1).)

This bill is identical to the federal law. It includes the same definition of "reasonably available" as federal law. Since the enactment of the Adam Walsh Act, courts have continued to balance the defendant's right to relevant evidence necessary for preparing a defense and protecting child victims from further trauma by allowing reproduction of this evidence. The U.S. District Court for the Eastern District of Virginia ruled that section 3509, subdivision (m) is not an impermissible violation of the defendant's right to a fair trial because the defendant is granted an ample opportunity to view or inspect the material.

While the statute does not define 'ample opportunity,' that term must be read to include at least every opportunity for inspection, viewing, and examination required by the Constitution. If read in that way, any opportunity for inspection that falls short of that mark would enable a court to order a copy given to the defendant for inspection outside a 'Government facility.' Long-established canons of statutory construction require the Court to read 'ample opportunity' in just this way. (*United States v. Knellinger* (E.D. Va. 2007) 471 F.Supp.2d 640, 644.)

The court in *Knellinger* effectively read a remedy into section 3509, subdivision (m) in the event the defendant is not “given ample opportunity” to order copies be provided to the defendant, if necessary. Effectively, the court stated if the Constitution requires access to evidence for purposes of a fair trial, then the court may always fashion a remedy where the defendant is not allowed access to evidence for purposes of a fair trial, even if the statute does not expressly provide for it.

As discussed above, the opportunity to inspect, view, and examine contemplated by § 3509(m)(2)(B) requires, at a minimum, whatever opportunity is mandated by the Constitution; therefore, an opportunity that is “generous” or “more than adequate” may, in some circumstances, require more access than what would be mandated by the Constitution alone. Under that interpretation of “ample opportunity” the Court need not necessarily resolve *Knellinger*’s as applied constitutional challenge in order to determine whether *Knellinger* has been afforded an “ample opportunity” to access his hard drive. If the statutorily required ample opportunity to access his hard drive has not been provided, the Court may order production of the hard drive without deciding whether the Constitution would also compel its production. (*Knellinger, supra*, 471 F.Supp.2d at 645.)

The United States Supreme Court has held that, at least as far as due process is concerned, discovery should “insure” the defendant has “ample opportunity to investigate certain facts crucial to the determination of guilt or innocence.” (*Williams v. Florida* (1970) 399 U.S. 78, 82; *Wardius v. Oregon* (1973) 412 U.S. 470, 474.)

Moreover, the *Knellinger* court noted that “‘ample opportunity’ may, in some circumstances, include greater access than what the Constitution alone would require. In interpreting this same statutory provision, another district court noted that [t]he word ‘ample’ means ‘generous or more than adequate in size, scope, or capacity.’” (*Knellinger, supra*, 471 F.Supp.2d at 645 [citations and quotations omitted].) Under that interpretation, “the opportunity to inspect, view, and examine contemplated by § 3509(m)(2)(B) requires, at a minimum, whatever opportunity is mandated by the Constitution; therefore, an opportunity that is ‘generous’ or ‘more than adequate’ may, in some circumstances, require more access than what would be mandated by the Constitution alone.” (*Knellinger, supra*, 471 F.Supp.2d at 645.)

While the absence of a remedy for violation may create confusion, courts will likely still provide copying if the prosecution does not, at least, provide a constitutional level of access so as to allow for a fair trial. This includes allowing time for defense attorneys and experts to view the material at a secure location to prepare for a case. Federal courts have considered numerous remedies in deciding how best to preserve the defendant’s right to a fair trial without providing copies.¹ In most cases, courts have not found any due process violation

¹ See also *United States v. Healey* (S.D.N.Y. 2012) 860 F.Supp.2d 262, 270, 271 [“courts have taken different approaches to handling the inherent difficulties in the discovery phase of a child pornography prosecution. In this case, for example, the prosecution sent a mirror image of the computers to Oregon to facilitate analysis by defendant’s expert at the FBI office there.”]; *United States v. McNealy* (5th Cir. 2010) 625 F.3d 858, 868 [held that

because the defense was entitled to view and analyze the materials at either the U.S. Attorney's Office or the FBI field office.²

4. Practical Consideration

This bill uses the definition of victim that applies in federal law at 18 U.S.C. § 2259, subdivision (c)(4). In federal law, victim is defined as an individual harmed as a result of the commission of specified federal child sexual exploitation and other abuse of children offenses. It is unclear how this definition applies to California state discovery rules in cases involving child pornography.

5. Argument in Support

According to the California Police Chiefs Association:

The bill directly addresses the highly sensitive and damaging nature of child pornography material. It ensures that such materials remain under strict control by law enforcement, the prosecution, and the courts. By eliminating the potential for unauthorized copies or distribution of this evidence, AB 528 reduces the risk of further harm or misuse of such deeply distressing material.

Current law allows for the disclosure of copies of illicit child material to a defendant's legal team. While these provisions are intended to aid in a fair trial, they create potential risks by giving access to highly sensitive materials. The revised approach in AB 528 enhances safeguards by mandating that this type of evidence remain in the custody of authorized entities while still providing the defendant and their legal representative's ample opportunities to inspect and review the material in a controlled environment.

As law enforcement leaders, we are committed to supporting policies that prioritize the welfare of our community members and uphold the integrity of legal proceedings. AB 528 offers a thoughtful, balanced approach to handling sensitive materials, striking an important balance between the rights of the defendant, the protection of vulnerable victims, and the need for rigorous evidence management.

6. Argument in Opposition

According to the California Public Defenders Association:

AB 528 is unnecessary and costly. Although AB 528 is modeled on federal law, the discovery provisions of federal law are extremely limited. California voters in enacting Proposition 15 embraced a different model for economy, efficiency and justice. In California the disclosure of child pornographic evidence is already

defendant did not suffer any due process violation because McNealy had full access to the Government's exhibits and could have completed all the enumerated tasks essential to his defense].)

² Proposition 115 added Penal Code section 1054.1 which generally requires the prosecutor to provide the defendant with witness statements, defendant statements, all relevant evidence seized by the police, and any record of prior convictions. This bill does not necessarily restrict access to relevant information, it just requires any such evidence to be viewed at one location and prohibits copying or duplicating if reasonable access has been provided.

limited. Penal Code section 1054.10 provides that no attorney may provide or disclose child pornography to anyone except individuals who are employed by the attorney or appointed by the court to prepare a defense. An attorney who violates section 1054.10 could be found in contempt of court and face monetary sanctions and/or jail. Additionally, an attorney could face State Bar discipline including suspension or revocation of their law license.

Significant Costs for Counties and the State:

Indigent defense statewide is underfunded. Even California's most affluent counties spend significantly less on indigent defense than they do on prosecution. Recently, the San Francisco Public Defender had to declare unavailability and refuse to take new cases due to the demands of existing cases.

(<https://sfstandard.com/2025/05/09/public-defender-fentanyl-san-francisco-lurie/>)

AB 528 would require dedicating more of a lawyer's and defense team's time to review child pornography evidence at a district attorney's office or a courthouse. This in turn would either require a county to hire additional defense personnel or potentially for the public defender office, as an agency with separate constitutional obligations, to declare that they can't take new cases. The additional costs would not end at the county level but would affect the state costs for indigent appellate defense. These costs for the counties and the state could easily add up to millions of dollars statewide.

AB 528 violates a defendant's right to due process and equal protection under both the federal and state constitutions. Due process requires that both the defendant and the State have ample opportunity to investigate the facts crucial to the determination of guilt or innocence. (*Wardius v. Oregon*, (1973) 412 U.S. 470; *People v. Gonzalez* (2006) 38 Cal.4th 932.) This bill would dramatically impede a defense counsel's ability to review the core evidence in any child pornography prosecution by making prosecution discovery only available to review at some other location, most likely during court or office hours. It would effectively prevent the review of the evidence by necessary out-of-town experts when it is essential to defend the client. While wealthy individuals could afford counsel and experts that could view the evidence within the restrictions sought here, poor individuals represented by public or private appointed counsel limited by shrinking public budgets would be unable to do. Such a limitation will not withstand constitutional scrutiny.

– END –