
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: SB 558 **Hearing Date:** April 11, 2023
Author: Rubio
Version: February 15, 2023
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Crimes: childhood sexual abuse*

HISTORY

Source: Youth Power Project

Prior Legislation: SB 1081 (Rubio), Ch. 882, Stats. 2022

Support: Consumer Attorneys of California; CHILDUSA Advocacy; Generation Up; Youth Power Project

Opposition: None known

PURPOSE

The purpose of this bill is to amend the definition of “distribute” for purposes of child pornography and to change the statute of limitations for a civil law suit for recovery of damages suffered as a result of child pornography to commence within 22 years of the date the plaintiff attains the age of majority or within 10 years of the date the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual assault, whichever period expires later.

Existing law 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, with the intent to distribute or exhibit or exchange with others any matter that depicts a person under the age of 18 years personally engaging in or simulating sexual conduct shall be punished either by imprisonment in the county jail for up to one year, by a fine not to exceed \$1,000, or by both the fine and imprisonment; or by imprisonment in the state prison, by a fine not to exceed \$10,000, or by the fine and imprisonment. (Pen. Code, § 311.1, subd. (a).)

Existing law states 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, with intent to distribute or to exhibit to others, or who offers to distribute, distributes, or exhibits to others, any obscene matter is for a first offense, guilty of a misdemeanor. On a second or subsequent offense, the court may impose a fine not exceeding \$50,000.00. (Pen. Code, § 311.2, subd. (a).)

Existing law states 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, 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 the age of 18 years personally engaging in or personally simulating sexual conduct is guilty of a felony and shall be punished by imprisonment in the state prison for two, three, or six years, or by a fine not exceeding \$100,000, in the absence of a finding that the defendant would be incapable of paying that fine, or by both that fine and imprisonment. (Pen. Code, § 311.2, subd. (b).)

Existing law states 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 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 the age of 18 years personally engaging in or personally simulating sexual conduct shall be punished by imprisonment in the county jail for up to one year, or by a fine not exceeding \$2,000, or by both that fine and imprisonment, or by imprisonment in the state prison. It is not necessary to prove commercial consideration or that the matter is obscene in order to establish a violation of this subdivision. If the person has been previously convicted of a violation of this subdivision, they are guilty of a felony. (Pen. Code, § 311.2, subd. (c).)

Existing law states 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 with intent to distribute or exhibit to, or to exchange with, a person under 18 years of age, or who offers to distribute, distributes, or exhibits to, or exchanges with, a person under 18 years of age any matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct is guilty of a felony. It is not necessary to prove commercial consideration or that the matter is obscene in order to establish a violation of this subdivision. (Pen. Code, § 311.2, subd. (d).)

Existing law states that any person who advertises for sale or distribution any obscene matter knowing that it depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct is guilty of a felony and is punishable by imprisonment in the state prison for two, three or four years, or in a county jail not exceeding one year, or by a fine not exceeding \$50,000 or by both the fine and imprisonment. (Pen. Code, § 311.10, subd. (a).)

Existing law states that upon the conviction of the accused, the court may, when the conviction becomes final, order any matter or advertisement, in respect whereof the accused stands convicted, and which remains in the possession or under the control of the district attorney or any law enforcement agency, to be destroyed and the court may cause to be destroyed any such material in its possession or under its control. (Pen. Code, § 312.)

Existing law states that the child pornography crimes do not apply to:

- The activities of law enforcement and prosecuting agencies in the investigation and prosecution of criminal offenses or to legitimate medical, scientific, or education activities, or to lawful conduct between spouses;
- Matter which depicts a child under the age of 18 who is legally emancipated including the lawful conduct between spouses when one or both are under the age of 18; and,
- A telephone corporation to carry or transmit messages or perform related activities in providing telephone services. (Pen. Code, §§ 311.1, subds. (b)-(d) and 311.2, subds. (e)-(g).)

Existing law defines “obscene matter” to mean matter, taken as a whole, that to the average person, applying contemporary statewide standards, appeals to the prurient interest, that, taken as a whole, depicts or describes sexual conduct in a patently offensive way, and that, taken as a whole, lacks serious literary, artistic, political, or scientific value. (Pen. Code, § 311, subd. (a).)

Existing law provides that in determining whether the matter taken as a whole lacks serious literary, artistic, political, or scientific value in description or representation of those matters, the fact that the defendant knew that the matter depicts persons under the age of 16 years engaged in sexual conduct, as defined, is a factor that may be considered in making that determination. (Pen. Code, § 311, subd. (a)(3).)

Existing law defines “distribute” for purposes of child pornography to mean to transfer possession of, whether with or without consideration.

This bill amends the definition of “distribute” for purposes of child pornography to include exhibiting in public or giving possession, except in the following circumstances:

- The distribution is made in the courts of reporting an unlawful activity;
- The distribution is made in compliance with a subpoena or other court order for use in a legal proceeding;
- The distribution is made in the course of a lawful public proceeding; or,
- The distribution is related to a matter of public concern or interest. Distribution is not a matter of public concern or public interest solely because the depicted individual is a public figure.

Existing law authorizes a civil lawsuit for recovery of damages suffered as a result of childhood sexual assault to commence within 22 years of the date of the plaintiff attains the age of majority or within 5 years of the date the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual assault, whichever period expires later, for any of the following actions:

- An action against any person for committing an act of childhood sexual assault;

- An action for liability against any person or entity who owed a duty to the plaintiff, if a wrongful or negligent act by that person or entity was a legal cause of the childhood sexual assault that resulted in the injury to the plaintiff; or,
- An action for liability against any person or entity if an intentional act by that person or entity was the legal cause of the childhood sexual assault that resulted in the injury to the plaintiff. (Code of Civ. Proc., § 340.1, subd. (a).)

This bill states that notwithstanding the above statute of limitation, in an action for recovery of damages as a result of childhood sexual assault related to child pornography, the time for commencement of the action shall be within 22 years of the date the plaintiff attains the age of majority or within 10 years of the date the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual assault, whichever period is later, for any of the specified actions.

Existing law defines “childhood sexual assault” as used in the civil lawsuit provision to include any act committed against the plaintiff that occurred when the plaintiff was under the age of 18 years and that would have been in violation of specified sex crimes. (Code Civ. Proc., § 340.1, subd. (d).)

This bill adds child pornography offenses as one of the included sex crimes in the definition of “childhood sexual assault” for purposes of a civil lawsuit.

COMMENTS

1. Need for This Bill

According to the author of this bill:

Existing law (AB 218, SB 23, SB 2081) addresses child sexual abuse and but not child sexual abuse material [CSAM]. Additionally, for CSAM, the CA Penal Code states that victims have ten years since the date of production of the pornographic material, which, if victims were extremely young at the time of production, ten years is not sufficient time to discover and file a suit, as they would still be relatively young and unaware of the material. This bill would extend the statute of limitations to file a suit pertaining to the distribution of child sexual abuse material to ten years since the victim discovers the material, or until they turn 40 years of age. Additionally, it would amend the definition of “distribution” as it relates to child sexual abuse material to cover display information (currently, the law does not cover CSAM distributed on billboards, trucks, etc.). SB 1081 currently only covers revenge porn and not CSAM.

2. Definition of Distribute

Existing law makes it a crime to distribute, possess, publish, produce, develop, duplicate, print or exhibit obscene materials depicting a person under the age of 18 personally engaging in sexual conduct, otherwise known as child pornography. Existing law defines “distribute” for purposes of these crimes to mean “transfer possession of, whether with or without consideration.” (Pen. Code, § 311, subd. (d).)

This bill amends the existing definition of distribute to include exhibiting in public as well as giving possession. The bill also provides exceptions to which include distribution made in the course of reporting unlawful activity, distribution made in compliance with a subpoena or other court order, distribution made in the course of a lawful public proceeding, or distribution related to a matter of public concern or public interest. This definition is consistent with the definition of “distribute” enacted by SB 1081 (Rubio), Chapter 882, Statutes of 2022 as it related to the crime of revenge porn.

3. Statute of Limitations for Civil Lawsuits based on Childhood Sexual Abuse

Existing law states that a civil lawsuit for recovery of damages based on childhood sexual abuse shall commence 22 years after a plaintiff reaches the age of 18 or within 5 years of the date the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual assault, whichever period is later. (Code Civ. Proc., § 340.1.) This bill states that for actions for recovery of damages based on childhood sexual assault where the plaintiff was a victim of child pornography, the civil action shall commence within 22 years after the plaintiff the plaintiff turns 18 or within 10 years of the date the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual assault, whichever period expires later. The main difference between the existing statute of limitations and the one provided by this bill is the additional time limit after the plaintiff discovers or reasonably should have discovered the psychological injury or illness caused by the assault. Presumably, the additional time may be needed because the victim may not know of the existence of these materials.

Because civil lawsuits are within the jurisdiction of the Judiciary Committee where this bill will be heard next, the analysis on this aspect of the bill will be addressed in the Judiciary Committee.

4. Amendments to be Taken in Committee

The author intends to take amendments in committee to place the definition of “distribute” in Penal Code section 311, rather than in Penal Code sections 311.1 and 311.2 to avoid conflict with the existing definition of “distribute” for child pornography and conform to the definition of “distribute” that exists in other penal code sections.

5. Argument in Support

According to Youth Power Project, the sponsor of this bill:

The bill will extend the statute of limitations to file a suit pertaining to the distribution of child sexual abuse material to ten years since the realization that the material exists, or until victims turn 40 years old, whichever comes later. After the COVID-19 pandemic, online child sexual abuse material and grooming tripled as children were required to stay indoors and their engagement with online platforms skyrocketed. A study funded by the Australian eSafety Commissioner, which interviewed law enforcement officers and frontline responders across the globe, found significant evidence of a reported increase in cases of online sexual exploitation and abuse, including increased numbers of child sexual abuse material, online grooming, activity in online abuse communities, online risk-

taking by minors, and live streaming of abuse materials. In California, child abuse cases dropped 50% once the state began its stay-at-home orders, which is indicative of a growing divide between the number of cases being filed and the amount of child sexual abuse material actually being produced and disseminated in the state of California.

It is an unacceptable tragedy that victims of abuse are unable to hold their abuser accountable simply because the law arbitrarily says their time to report has run out. It is similarly unacceptable that perpetrators currently have a loophole to publicly display CSAM and still receive lesser sentences, due to the currently limiting definition of “distribution” in the California Penal Code.

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