

# CALIFORNIA STATE OBSCENITY & LIBRARY/SCHOOL FILTERING STATUTES

(Last Updated Summer 2012)

## Cal. Penal Code § 311. Definitions

- As used in this chapter, the following definitions apply:
  - **(a)** "Obscene matter" means 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.
    - **(1)** If it appears from the nature of the matter or the circumstances of its dissemination, distribution, or exhibition that it is designed for clearly defined deviant sexual groups, the appeal of the matter shall be judged with reference to its intended recipient group.
    - **(2)** In prosecutions under this chapter, if circumstances of production, presentation, sale, dissemination, distribution, or publicity indicate that matter is being commercially exploited by the defendant for the sake of its prurient appeal, this evidence is probative with respect to the nature of the matter and may justify the conclusion that the matter lacks serious literary, artistic, political, or scientific value.
    - **(3)** 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 in subdivision (c) of Section 311.4, is a factor that may be considered in making that determination.
  - **(b)** "Matter" means any book, magazine, newspaper, or other printed or written material, or any picture, drawing, photograph, motion picture, or other pictorial representation, or any statue or other figure, or any recording, transcription, or mechanical, chemical, or electrical reproduction, or any other article, equipment, machine, or material. "Matter" also means live or recorded telephone messages if transmitted, disseminated, or distributed as part of a commercial transaction.
  - **(c)** "Person" means any individual, partnership, firm, association, corporation, limited liability company, or other legal entity.
  - **(d)** "Distribute" means transfer possession of, whether with or without consideration.
  - **(e)** "Knowingly" means being aware of the character of the matter or live conduct.
  - **(f)** "Exhibit" means show.
  - **(g)** "Obscene live conduct" means any physical human body activity, whether performed or engaged in alone or with other persons, including but not limited to singing, speaking, dancing, acting, simulating, or pantomiming, taken as a whole, that to the average person, applying contemporary statewide standards, appeals to the prurient interest and is conduct 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.

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- **(1)** If it appears from the nature of the conduct or the circumstances of its production, presentation, or exhibition that it is designed for clearly defined deviant sexual groups, the appeal of the conduct shall be judged with reference to its intended recipient group.
- **(2)** In prosecutions under this chapter, if circumstances of production, presentation, advertising, or exhibition indicate that live conduct is being commercially exploited by the defendant for the sake of its prurient appeal, that evidence is probative with respect to the nature of the conduct and may justify the conclusion that the conduct lacks serious literary, artistic, political, or scientific value.
- **(3)** In determining whether the live conduct 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 live conduct depicts persons under the age of 16 years engaged in sexual conduct, as defined in subdivision (c) of Section 311.4, is a factor that may be considered in making that determination.
- **(h)** The Legislature expresses its approval of the holding of People v. Cantrell, 7 Cal. App. 4th 523, that, for the purposes of this chapter, matter that "depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct" is limited to visual works that depict that conduct.

## § 311.1. Sale or distribution of obscene matter depicting person under age of 18 years engaging in sexual conduct

- **(a)** 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, 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, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, with intent to distribute or to exhibit to, or to exchange with, others, or who offers to distribute, distributes, or exhibits to, or exchanges with, others, any obscene matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, shall be punished either by imprisonment in the county jail for up to one year, by a fine not to exceed one thousand dollars (\$1,000), or by both the fine and imprisonment, or by imprisonment in the state prison, by a fine not to exceed ten thousand dollars (\$10,000), or by the fine and imprisonment.
- **(b)** This section does 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 educational activities, or to lawful conduct between spouses.
- **(c)** This section does not apply to matter which depicts a child under the age of 18, which child is legally emancipated, including lawful conduct between spouses when one or both are under the age of 18.
- **(d)** It does not constitute a violation of this section for a telephone corporation, as defined by Section 234 of the Public Utilities Code, to carry or transmit messages described in this chapter or perform related activities in providing telephone services.

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## § 311.2. Production, distribution, or exhibition of obscene matter

- **(a)** 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, 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. If the person has previously been convicted of any violation of this section, the court may, in addition to the punishment authorized in Section 311.9, impose a fine not exceeding fifty thousand dollars (\$50,000).
- **(b)** 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, 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, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, 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, as defined in Section 311.4, 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 one hundred thousand dollars (\$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.
- **(c)** 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, 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, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, 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, as defined in Section 311.4, shall be punished by imprisonment in the county jail for up to one year, or by a fine not exceeding two thousand dollars (\$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 a person has been previously convicted of a violation of this subdivision, he or she is guilty of a felony.
- **(d)** 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,

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prepares, publishes, produces, develops, duplicates, or prints 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, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, 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, as defined in Section 311.4, 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.

- **(e)** Subdivisions (a) to (d), inclusive, do not apply to the activities of law enforcement and prosecuting agencies in the investigation and prosecution of criminal offenses, to legitimate medical, scientific, or educational activities, or to lawful conduct between spouses.
- **(f)** This section does not apply to matter that depicts a legally emancipated child under the age of 18 years or to lawful conduct between spouses when one or both are under the age of 18 years.
- **(g)** It does not constitute a violation of this section for a telephone corporation, as defined by Section 234 of the Public Utilities Code, to carry or transmit messages described in this chapter or to perform related activities in providing telephone services.

## § 311.3. Sexual exploitation of child

- **(a)** A person is guilty of sexual exploitation of a child if he or she 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, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip that depicts a person under the age of 18 years engaged in an act of sexual conduct.
- **(b)** As used in this section, "sexual conduct" means any of the following:
  - **(1)** Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals.
  - **(2)** Penetration of the vagina or rectum by any object.
  - **(3)** Masturbation for the purpose of sexual stimulation of the viewer.
  - **(4)** Sadoomasochistic abuse for the purpose of sexual stimulation of the viewer.
  - **(5)** Exhibition of the genitals or the pubic or rectal area of any person for the purpose of sexual stimulation of the viewer.
  - **(6)** Defecation or urination for the purpose of sexual stimulation of the viewer.
- **(c)** Subdivision (a) does not apply to the activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses or to

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legitimate medical, scientific, or educational activities, or to lawful conduct between spouses.

- **(d)** Every person who violates subdivision (a) shall be punished by a fine of not more than two thousand dollars (\$2,000) or by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment. If the person has been previously convicted of a violation of subdivision (a) or any section of this chapter, he or she shall be punished by imprisonment in the state
- **(e)** The provisions of this section do not apply to an employee of a commercial film developer who is acting within the scope of his or her employment and in accordance with the instructions of his or her employer, provided that the employee has no financial interest in the commercial developer by which he or she is employed.
- **(f)** Subdivision (a) does not apply to matter that is unsolicited and is received without knowledge or consent through a facility, system, or network over which the person or entity has no control.

## § 311.4. Employment of minor in sale or distribution of obscene matter or production of pornography

- **(a)** Every person who, with knowledge that a person is a minor, or who, while in possession of any facts on the basis of which he or she should reasonably know that the person is a minor, hires, employs, or uses the minor to do or assist in doing any of the acts described in Section 311.2, shall be punished by imprisonment in the county jail for up to one year, or by a fine not exceeding two thousand dollars (\$2,000), or by both that fine and imprisonment, or by imprisonment in the state prison. If the person has previously been convicted of any violation of this section, the court may, in addition to the punishment authorized in Section 311.9, impose a fine not exceeding fifty thousand dollars (\$50,000).
- **(b)** Every person who, with knowledge that a person is a minor under the age of 18 years, or who, while in possession of any facts on the basis of which he or she should reasonably know that the person is a minor under the age of 18 years, knowingly promotes, employs, uses, persuades, induces, or coerces a minor under the age of 18 years, or any parent or guardian of a minor under the age of 18 years under his or her 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, 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, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film, filmstrip, or a live performance involving, sexual conduct by a minor under the age of 18 years alone or with other persons or animals, for commercial purposes, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.
- **(c)** Every person who, with knowledge that a person is a minor under the age of 18 years, or who, while in possession of any facts on the basis of which he or she should reasonably know that the person is a minor under the age of 18 years, knowingly promotes, employs, uses, persuades, induces, or coerces a minor under the age of 18 years, or any parent or guardian of a minor under the age of 18 years under his or her control who knowingly permits the minor, to engage in or assist others to engage

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in either posing or modeling alone or with others for purposes of preparing 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, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film, filmstrip, or a live performance involving, sexual conduct by a minor under the age of 18 years alone or with other persons or animals, is guilty of a felony. It is not necessary to prove commercial purposes in order to establish a violation of this subdivision.

- **(d)**
  - **(1)** As used in subdivisions (b) and (c), "sexual conduct" means any of the following, whether actual or simulated: sexual intercourse, oral copulation, anal intercourse, anal oral copulation, masturbation, bestiality, sexual sadism, sexual masochism, penetration of the vagina or rectum by any object in a lewd or lascivious manner, exhibition of the genitals or pubic or rectal area for the purpose of sexual stimulation of the viewer, any lewd or lascivious sexual act as defined in Section 288, or excretory functions performed in a lewd or lascivious manner, whether or not any of the above conduct is performed alone or between members of the same or opposite sex or between humans and animals. An act is simulated when it gives the appearance of being sexual conduct.
  - **(2)** As used in subdivisions (b) and (c), "matter" means any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, or any other computer-related equipment or computer-generated image that contains or incorporates in any manner, any film, filmstrip, photograph, negative, slide, photocopy, videotape, or video laser disc.
- **(e)** This section does not apply to a legally emancipated minor or to lawful conduct between spouses if one or both are under the age of 18.
- **(f)** In every prosecution under this section involving a minor under the age of 14 years at the time of the offense, the age of the victim shall be pled and proven for the purpose of the enhanced penalty provided in Section 647.6. Failure to plead and prove that the victim was under the age of 14 years at the time of the offense is not a bar to prosecution under this section if it is proven that the victim was under the age of 18 years at the time of the offense.

## § 311.5. Advertising or promotion of matter represented to be obscene

Every person who writes, creates, or solicits the publication or distribution of advertising or other promotional material, or who in any manner promotes, the sale, distribution, or exhibition of matter represented or held out by him to be obscene, is guilty of a misdemeanor.

## § 311.6. Obscene live conduct

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Every person who knowingly engages or participates in, manages, produces, sponsors, presents or exhibits obscene live conduct to or before an assembly or audience consisting of at least one person or spectator in any public place or in any place exposed to public view, or in any place open to the public or to a segment thereof, whether or not an admission fee is charged, or whether or not attendance is conditioned upon the presentation of a membership card or other token, is guilty of a misdemeanor.

## § 311.7. Requiring purchaser or consignee to receive obscene matter

Every person who, knowingly, as a condition to a sale, allocation, consignment, or delivery for resale of any paper, magazine, book, periodical, publication or other merchandise, requires that the purchaser or consignee receive any obscene matter or who denies or threatens to deny a franchise, revokes or threatens to revoke, or imposes any penalty, financial or otherwise, by reason of the failure of any person to accept obscene matter, or by reason of the return of such obscene matter, is guilty of a misdemeanor.

## § 311.8. Defenses

- **(a)** It shall be a defense in any prosecution for a violation of this chapter that the act charged was committed in aid of legitimate scientific or educational purposes.
- **(b)** It shall be a defense in any prosecution for a violation of this chapter by a person who knowingly distributed any obscene matter by the use of telephones or telephone facilities to any person under the age of 18 years that the defendant has taken either of the following measures to restrict access to the obscene matter by persons under 18 years of age:
  - **(1)** Required the person receiving the obscene matter to use an authorized access or identification code, as provided by the information provider, before transmission of the obscene matter begins, where the defendant has previously issued the code by mailing it to the applicant therefor after taking reasonable measures to ascertain that the applicant was 18 years of age or older and has established a procedure to immediately cancel the code of any person after receiving notice, in writing or by telephone, that the code has been lost, stolen, or used by persons under the age of 18 years or that the code is no longer desired.
  - **(2)** Required payment by credit card before transmission of the matter.
- **(c)** Any list of applicants or recipients compiled or maintained by an information-access service provider for purposes of compliance with subdivision (b) is confidential and shall not be sold or otherwise disseminated except upon order of the court.

## § 311.9. Punishment

- **(a)** Every person who violates subdivision (a) of Section 311.2 or Section 311.5 is punishable by fine of not more than one thousand dollars (\$1,000) plus five dollars (\$5) for each additional unit of material coming within the provisions of this chapter,

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which is involved in the offense, not to exceed ten thousand dollars (\$10,000), or by imprisonment in the county jail for not more than six months plus one day for each additional unit of material coming within the provisions of this chapter, and which is involved in the offense, not to exceed a total of 360 days in the county jail, or by both that fine and imprisonment. If that person has previously been convicted of any offense in this chapter, or of a violation of Section 313.1, a violation of subdivision (a) of Section 311.2 or Section 311.5 is punishable as a felony by imprisonment pursuant to subdivision (h) of Section 1170.

- **(b)** Every person who violates subdivision (a) of Section 311.4 is punishable by fine of not more than two thousand dollars (\$2,000) or by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment, or by imprisonment pursuant to subdivision (h) of Section 1170. If that person has been previously convicted of a violation of former Section 311.3 or Section 311.4 he or she is punishable by imprisonment pursuant to subdivision (h) of Section 1170.
- **(c)** Every person who violates Section 311.7 is punishable by fine of not more than one thousand dollars (\$1,000) or by imprisonment in the county jail for not more than six months, or by both that fine and imprisonment. For a second and subsequent offense he or she shall be punished by a fine of not more than two thousand dollars (\$2,000), or by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment. If the person has been twice convicted of a violation of this chapter, a violation of Section 311.7 is punishable as a felony by imprisonment pursuant to subdivision (h) of Section 1170.

## § 311.10. Advertisement of obscene matters depicting minors

- **(a)** 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, as defined in Section 311.4, 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 fifty thousand dollars (\$50,000), or by both such fine and imprisonment.
- **(b)** Subdivision (a) shall not apply to the activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses.

## § 311.11. Possession or control of child pornography; Persons previously convicted guilty of felony

- **(a)** Every person who knowingly possesses or controls any matter, 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, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, the production of which involves the use of a person under the age of 18 years, knowing that the matter depicts a person under the age of 18 years personally engaging in or simulating sexual conduct, as defined in subdivision (d) of Section 311.4, is guilty of a felony

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and shall be punished by imprisonment in the state prison, or a county jail for up to one year, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both the fine and imprisonment.

- **(b)** Every person who commits a violation of subdivision (a), and who has been previously convicted of a violation of this section, an offense requiring registration under the Sex Offender Registration Act, or an attempt to commit any of the above-mentioned offenses, is guilty of a felony and shall be punished by imprisonment in the state prison for two, four, or six years.
- **(c)** It is not necessary to prove that the matter is obscene in order to establish a violation of this section.
- **(d)** This section does not apply to drawings, figurines, statues, or any film rated by the Motion Picture Association of America, nor does it apply to live or recorded telephone messages when transmitted, disseminated, or distributed as part of a commercial transaction.

## § 312. Destruction of obscene matter or advertisement upon conviction

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.

### § 312.1. Expert testimony in obscenity prosecution; Evidence of community standards

In any prosecution for a violation of the provisions of this chapter or of Chapter 7.6 (commencing with Section 313), neither the prosecution nor the defense shall be required to introduce expert witness testimony concerning the obscene or harmful character of the matter or live conduct which is the subject of the prosecution. Any evidence which tends to establish contemporary community standards of appeal to prurient interest or of customary limits of candor in the description or representation of nudity, sex, or excretion, or which bears upon the question of significant literary, artistic, political, educational, or scientific value shall, subject to the provisions of the Evidence Code, be admissible when offered by either the prosecution or by the defense.

### § 312.3. Forfeiture and destruction of matter depicting minors engaging in or simulating sexual conduct

- **(a)** Matter that depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct as defined in Section 311.4 and that is in the possession of any city, county, city and county, or state official or agency is subject to forfeiture pursuant to this section.
- **(b)** An action to forfeit matter described in subdivision (a) may be brought by the Attorney General, the district attorney, county counsel, or the city attorney.

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Proceedings shall be initiated by a petition of forfeiture filed in the superior court of the county in which the matter is located.

- **(c)** The prosecuting agency shall make service of process of a notice regarding that petition upon every individual who may have a property interest in the alleged proceeds. The notice shall state that any interested party may file a verified claim with the superior court stating the amount of their claimed interest and an affirmation or denial of the prosecuting agency's allegation. If the notice cannot be given by registered mail or personal delivery, the notice shall be published for at least three successive weeks in a newspaper of general circulation in the county where the property is located. All notices shall set forth the time within which a claim of interest in the property seized is required to be filed.
- **(d)**
  - **(1)** Any person claiming an interest in the property or proceeds may, at any time within 30 days from the date of the first publication of the notice of seizure, or within 30 days after receipt of actual notice, file with the superior court of the county in which the action is pending a verified claim stating his or her interest in the property or proceeds. A verified copy of the claim shall be given by the claimant to the Attorney General or district attorney, county counsel, or city attorney, as appropriate.
  - **(2)** If, at the end of the time set forth in paragraph (1), an interested person has not filed a claim, the court, upon motion, shall declare that the person has defaulted upon his or her alleged interest, and it shall be subject to forfeiture upon proof of compliance with subdivision (c).
- **(e)** The burden is on the petitioner to prove beyond a reasonable doubt that matter is subject to forfeiture pursuant to this section.
- **(f)** It is not necessary to seek or obtain a criminal conviction prior to the entry of an order for the destruction of matter pursuant to this section. Any matter described in subdivision (a) that is in the possession of any city, county, city and county, or state official or agency, including found property, or property obtained as the result of a case in which no trial was had or that has been disposed of by way of dismissal or otherwise than by way of conviction may be ordered destroyed.
- **(g)** A court order for destruction of matter described in subdivision (a) may be carried out by a police or sheriff's department or by the Department of Justice. The court order shall specify the agency responsible for the destruction.
- **(h)** As used in this section, "matter" means any book, magazine, newspaper, or other printed or written material or any picture, drawing, photograph, motion picture, or other pictorial representation, or any statue or other figure, or any recording, transcription or mechanical, chemical or electrical reproduction, or any other articles, equipment, machines, or materials. "Matter" also means 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, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner any film or filmstrip.
- **(i)** This section does not apply to a depiction of a legally emancipated minor or to lawful conduct between spouses if one or both are under the age of 18.
- **(j)** It is a defense in any forfeiture proceeding that the matter seized was lawfully possessed in aid of legitimate scientific or educational purposes.

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## § 313. Definitions

- As used in this chapter:
  - **(a)** "Harmful matter" means matter, taken as a whole, which to the average person, applying contemporary statewide standards, appeals to the prurient interest, and is matter which, taken as a whole, depicts or describes in a patently offensive way sexual conduct and which, taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.
    - **(1)** When it appears from the nature of the matter or the circumstances of its dissemination, distribution or exhibition that it is designed for clearly defined deviant sexual groups, the appeal of the matter shall be judged with reference to its intended recipient group.
    - **(2)** In prosecutions under this chapter, where circumstances of production, presentation, sale, dissemination, distribution, or publicity indicate that matter is being commercially exploited by the defendant for the sake of its prurient appeal, that evidence is probative with respect to the nature of the matter and can justify the conclusion that the matter lacks serious literary, artistic, political, or scientific value for minors.
  - **(b)** "Matter" means any book, magazine, newspaper, video recording, or other printed or written material or any picture, drawing, photograph, motion picture, or other pictorial representation or any statue or other figure, or any recording, transcription, or mechanical, chemical, or electrical reproduction or any other articles, equipment, machines, or materials. "Matter" also includes live or recorded telephone messages when transmitted, disseminated, or distributed as part of a commercial transaction.
  - **(c)** "Person" means any individual, partnership, firm, association, corporation, limited liability company, or other legal entity.
  - **(d)** "Distribute" means to transfer possession of, whether with or without consideration.
  - **(e)** "Knowingly" means being aware of the character of the matter.
  - **(f)** "Exhibit" means to show.
  - **(g)** "Minor" means any natural person under 18 years of age.

### § 313.1. Distribution or exhibition of harmful matter to minor; Addition of harmful matter to rented video; Defenses

- **(a)** Every person who, with knowledge that a person is a minor, or who fails to exercise reasonable care in ascertaining the true age of a minor, knowingly sells, rents, distributes, sends, causes to be sent, exhibits, or offers to distribute or exhibit by any means, including, but not limited to, live or recorded telephone messages, any harmful matter to the minor shall be punished as specified in Section 313.4.
- It does not constitute a violation of this section for a telephone corporation, as defined by Section 234 of the Public Utilities Code, to carry or transmit messages described in this chapter or to perform related activities in providing telephone services.
- **(b)** Every person who misrepresents himself or herself to be the parent or guardian of a minor and thereby causes the minor to be admitted to an exhibition of any harmful matter shall be punished as specified in Section 313.4.
- **(c)**

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# CALIFORNIA STATE OBSCENITY & LIBRARY/SCHOOL FILTERING STATUTES

(Last Updated Summer 2012)

- **(1)** Any person who knowingly displays, sells, or offers to sell in any coin-operated or slug-operated vending machine or mechanically or electronically controlled vending machine that is located in a public place, other than a public place from which minors are excluded, any harmful matter displaying to the public view photographs or pictorial representations of the commission of any of the following acts shall be punished as specified in Section 313.4: sodomy, oral copulation, sexual intercourse, masturbation, bestiality, or a photograph of an exposed penis in an erect and turgid state.
- **(2)** Any person who knowingly displays, sells, or offers to sell in any coin-operated vending machine that is not supervised by an adult and that is located in a public place, other than a public place from which minors are excluded, any harmful matter, as defined in subdivision (a) of Section 313, shall be punished as specified in Section 313.4.
- **(d)** Nothing in this section invalidates or prohibits the adoption of an ordinance by a city, county, or city and county that restricts the display of material that is harmful to minors, as defined in this chapter, in a public place, other than a public place from which minors are excluded, by requiring the placement of devices commonly known as blinder racks in front of the material, so that the lower two-thirds of the material is not exposed to view.
- **(e)** Any person who sells or rents video recordings of harmful matter shall create an area within his or her business establishment for the placement of video recordings of harmful matter and for any material that advertises the sale or rental of these video recordings. This area shall be labeled "adults only." The failure to create and label the area is an infraction, punishable by a fine not to exceed one hundred dollars (\$100). The failure to place a video recording or advertisement, regardless of its content, in this area shall not constitute an infraction. Any person who sells or distributes video recordings of harmful matter to others for resale purposes shall inform the purchaser of the requirements of this section. This subdivision shall not apply to public libraries as defined in Section 18710 of the Education Code.
- **(f)** Any person who rents a video recording and alters the video recording by adding harmful material, and who then returns the video recording to a video rental store, shall be guilty of a misdemeanor. It shall be a defense in any prosecution for a violation of this subdivision that the video rental store failed to post a sign, reasonably visible to all customers, delineating the provisions of this subdivision.
- **(g)** It shall be a defense in any prosecution for a violation of subdivision (a) by a person who knowingly distributed any harmful matter by the use of telephones or telephone facilities to any person under the age of 18 years that the defendant has taken either of the following measures to restrict access to the harmful matter by persons under 18 years of age:
  - **(1)** Required the person receiving the harmful matter to use an authorized access or identification code, as provided by the information provider, before transmission of the harmful matter begins, where the defendant previously has issued the code by mailing it to the applicant after taking reasonable measures to ascertain that the applicant was 18 years of age or older and has established a procedure to immediately cancel the code of any person after receiving notice, in writing or by telephone, that the code has been lost, stolen, or used by persons under the age of 18 years or that the code is no longer desired.
  - **(2)** Required payment by credit card before transmission of the matter.

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# CALIFORNIA STATE OBSCENITY & LIBRARY/SCHOOL FILTERING STATUTES

(Last Updated Summer 2012)

- **(h)** It shall be a defense in any prosecution for a violation of paragraph (2) of subdivision (c) that the defendant has taken either of the following measures to restrict access to the harmful matter by persons under 18 years of age:
  - **(1)** Required the person receiving the harmful matter to use an authorized access or identification card to the vending machine after taking reasonable measures to ascertain that the applicant was 18 years of age or older and has established a procedure to immediately cancel the card of any person after receiving notice, in writing or by telephone, that the code has been lost, stolen, or used by persons under the age of 18 years or that the card is no longer desired.
  - **(2)** Required the person receiving the harmful matter to use a token in order to utilize the vending machine after taking reasonable measures to ascertain that the person was 18 years of age or older.
- **(i)** Any list of applicants or recipients compiled or maintained by an information-access service provider for purposes of compliance with paragraph (1) of subdivision (g) is confidential and shall not be sold or otherwise disseminated except upon order of the court.

## § 313.2. Parental approval

- **(a)** Nothing in this chapter shall prohibit any parent or guardian from distributing any harmful matter to his child or ward or permitting his child or ward to attend an exhibition of any harmful matter if the child or ward is accompanied by him.
- **(b)** Nothing in this chapter shall prohibit any person from exhibiting any harmful matter to any of the following:
  - **(1)** A minor who is accompanied by his parent or guardian.
  - **(2)** A minor who is accompanied by an adult who represents himself to be the parent or guardian of the minor and whom the person, by the exercise of reasonable care, does not have reason to know is not the parent or guardian of the minor.

## § 313.3. Scientific or educational purpose as defense

It shall be a defense in any prosecution for a violation of this chapter that the act charged was committed in aid of legitimate scientific or educational purposes.

## § 313.4. Punishment

Every person who violates Section 313.1, other than subdivision (e), is punishable by fine of not more than two thousand dollars (\$2,000), by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment. However, if the person has been previously convicted of a violation of Section 313.1, other than subdivision (e), or of any section of Chapter 7.5 (commencing with Section 311) of Title 9 of Part 1 of this code, the person shall be punished by imprisonment pursuant to subdivision (h) of Section 1170.

## § 314. Indecent exposure

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# CALIFORNIA STATE OBSCENITY & LIBRARY/SCHOOL FILTERING STATUTES

(Last Updated Summer 2012)

- Every person who willfully and lewdly, either:
  - **1.** Exposes his person, or the private parts thereof, in any public place, or in any place where there are present other persons to be offended or annoyed thereby; or,
  - **2.** Procures, counsels, or assists any person so to expose himself or take part in any model artist exhibition, or to make any other exhibition of himself to public view, or the view of any number of persons, such as is offensive to decency, or is adapted to excite to vicious or lewd thoughts or acts, is guilty of a misdemeanor.
- Every person who violates subdivision 1 of this section after having entered, without consent, an inhabited dwelling house, or trailer coach as defined in Section 635 of the Vehicle Code, or the inhabited portion of any other building, is punishable by imprisonment in the state prison, or in the county jail not exceeding one year.
- Upon the second and each subsequent conviction under subdivision 1 of this section, or upon a first conviction under subdivision 1 of this section after a previous conviction under Section 288, every person so convicted is guilty of a felony, and is punishable by imprisonment in state prison.

## § 315. Keeping or residing in house of ill-fame

Every person who keeps a house of ill-fame in this state, resorted to for the purposes of prostitution or lewdness, or who wilfully resides in such house, is guilty of a misdemeanor; and in all prosecutions for keeping or resorting to such a house common repute may be received as competent evidence of the character of the house, the purpose for which it is kept or used, and the character of the women inhabiting or resorting to it.

## § 316. Keeping disorderly house

Every person who keeps any disorderly house, or any house for the purpose of assignation or prostitution, or any house of public resort, by which the peace, comfort, or decency of the immediate neighborhood is habitually disturbed, or who keeps any inn in a disorderly manner; and every person who lets any apartment or tenement, knowing that it is to be used for the purpose of assignation or prostitution, is guilty of a misdemeanor.

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## § 1417.8. Availability and disposition of photograph of minor that is harmful matter

- **(a)** Notwithstanding any other provision of this chapter, the court shall direct that any photograph of any minor that has been found by the court to be harmful matter, as defined in Section 313, and introduced or filed as an exhibit in any criminal proceeding specified in subdivision (b) be handled as follows:

# CALIFORNIA STATE OBSCENITY & LIBRARY/SCHOOL FILTERING STATUTES

(Last Updated Summer 2012)

- **(1)** Prior to the final determination of the action or proceeding, the photograph shall be available only to the parties or to a person named in a court order to receive the photograph.
  - **(2)** After the final determination of the action or proceeding, the photograph shall be preserved with the permanent record maintained by the clerk of the court. The photograph may be disposed of or destroyed after preservation through any appropriate photographic or electronic medium. If the photograph is disposed of, it shall be rendered unidentifiable before the disposal. No person shall have access to the photograph unless that person has been named in a court order to receive the photograph. Any copy, negative, reprint, or other duplication of the photograph in the possession of the state, a state agency, the defendant, or an agent of the defendant, shall be delivered to the clerk of the court for disposal whether or not the defendant was convicted of the offense.
  - **(b)** The procedure provided by subdivision (a) shall apply to actions listed under subdivision (c) of Section 290, and to acts under the following provisions:
    - **(1)** Section 261.5.
    - **(2)** Section 272.
    - **(3)** Chapter 7.5 (commencing with Section 311) of Title 9 of Part 1.
    - **(4)** Chapter 7.6 (commencing with Section 313) of Title 9 of Part 1.
  - **(c)** For the purposes of this section, "photograph" means any photographic image contained in a digital format or on any chemical, mechanical, magnetic, or electronic medium.
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## **§ 13021. Reports by local enforcement agencies on violations of obscenity laws**

Local law enforcement agencies shall report to the Department of Justice such information as the Attorney General may by regulation require relative to misdemeanor violations of Chapter 7.5 (commencing with Section 311) of Title 9 of Part 1 of this code.

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## **§ 5402. Advertising structures or signs; Prohibition against obscene words or pictures**

No person shall display or cause or permit to be displayed upon any advertising structure or sign, any statements or words of an obscene, indecent or immoral character, or any picture or illustration of any human figure in such detail as to offend public morals or decency, or any other matter or thing of an obscene, indecent or immoral character.

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## **§ 288.2. Sending harmful matter to minor by telephone messages, electronic mail, Internet, or commercial online service; Defenses; Exemption of carrier, broadcaster, or transmitter**

# CALIFORNIA STATE OBSCENITY & LIBRARY/SCHOOL FILTERING STATUTES

(Last Updated Summer 2012)

- **(a)** Every person who, with knowledge that a person is a minor, or who fails to exercise reasonable care in ascertaining the true age of a minor, knowingly distributes, sends, causes to be sent, exhibits, or offers to distribute or exhibit by any means, including, but not limited to, live or recorded telephone messages, any harmful matter, as defined in Section 313, to a minor with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of a minor, and with the intent or for the purpose of seducing a minor, is guilty of a public offense and shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 or in a county jail.
  - A person convicted of a second and any subsequent conviction for a violation of this section is guilty of a felony.
  - **(b)** Every person who, with knowledge that a person is a minor, knowingly distributes, sends, causes to be sent, exhibits, or offers to distribute or exhibit by electronic mail, the Internet, as defined in Section 17538 of the Business and Professions Code, or a commercial online service, any harmful matter, as defined in Section 313, to a minor with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of a minor, and with the intent, or for the purpose of seducing a minor, is guilty of a public offense and shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 or in a county jail.
  - A person convicted of a second and any subsequent conviction for a violation of this section is guilty of a felony punishable by imprisonment pursuant to subdivision (h) of Section 1170.
  - **(c)** It shall be a defense to any prosecution under this section that a parent or guardian committed the act charged in aid of legitimate sex education.
  - **(d)** It shall be a defense in any prosecution under this section that the act charged was committed in aid of legitimate scientific or educational purposes.
  - **(e)** It does not constitute a violation of this section for a telephone corporation, as defined in Section 234 of the Public Utilities Code, a cable television company franchised pursuant to Section 53066 of the Government Code, or any of its affiliates, an Internet service provider, or commercial online service provider, to carry, broadcast, or transmit messages described in this section or perform related activities in providing telephone, cable television, Internet, or commercial online services.
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## § 968. Obscene material

An accusatory pleading charging exhibiting, publishing, passing, selling, or offering to sell, or having in possession, with such intent, any lewd or obscene book, pamphlet, picture, print, card, paper, or writing, need not set forth any portion of the language used or figures shown upon such book, pamphlet, picture, print, card, paper, or writing; but it is sufficient to state generally the fact of the lewdness or **obscenity** thereof.

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## FILTERING LAWS

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# **CALIFORNIA STATE OBSCENITY & LIBRARY/SCHOOL FILTERING STATUTES**

(Last Updated Summer 2012)

## **Cal. Ed. Code § 18030.5. Adoption of policy regarding access to internet by minors**

**(a)** Every public library that receives state funds pursuant to this chapter and that provides public access to the Internet shall, by a majority vote of the governing board, adopt a policy regarding access by minors to the Internet by January 1, 2000.

**(b)** Every public library that is required to adopt a policy pursuant to subdivision (a) shall make the policy available to members of the public at every library branch.