

ASSEMBLY BILL

No. 2536

Introduced by Assembly Member Chau

February 19, 2016

An act to amend Sections 48900 and 51934 of the Education Code, relating to elementary and secondary education.

LEGISLATIVE COUNSEL'S DIGEST

AB 2536, as introduced, Chau. Pupil discipline and instruction: sexting.

(1) Existing law prohibits the suspension of a pupil from school or the recommendation of a pupil for expulsion from school unless the school district superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has committed any of several specified acts.

This bill would include engaging in an act of sexting, as defined, as an act for which a pupil may be suspended or expelled from school.

(2) Existing law, the California Healthy Youth Act, requires school districts to ensure that all pupils in grades 7 to 12, inclusive, receive comprehensive sexual health education and HIV prevention education, as specified. Under the act, this instruction includes, among other things, information about sexual harassment, sexual assault, adolescent relationship abuse, intimate partner violence, and sex trafficking.

This bill would require this instruction to additionally include information about sexting, as defined, as specified. By imposing additional duties on school districts, this bill would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

1 SECTION 1. Section 48900 of the Education Code is amended
2 to read:

3 48900. A pupil shall not be suspended from school or
4 recommended for expulsion, unless the superintendent of the school
5 district or the principal of the school in which the pupil is enrolled
6 determines that the pupil has committed an act as defined pursuant
7 to any of subdivisions (a) to ~~(r)~~, (s), inclusive:

8 (a) (1) Caused, attempted to cause, or threatened to cause
9 physical injury to another person.

10 (2) Willfully used force or violence upon the person of another,
11 except in self-defense.

12 (b) Possessed, sold, or otherwise furnished a firearm, knife,
13 explosive, or other dangerous object, unless, in the case of
14 possession of an object of this type, the pupil had obtained written
15 permission to possess the item from a certificated school employee,
16 which is concurred in by the principal or the designee of the
17 principal.

18 (c) Unlawfully possessed, used, sold, or otherwise furnished,
19 or been under the influence of, a controlled substance listed in
20 Chapter 2 (commencing with Section 11053) of Division 10 of the
21 Health and Safety Code, an alcoholic beverage, or an intoxicant
22 of any kind.

23 (d) Unlawfully offered, arranged, or negotiated to sell a
24 controlled substance listed in Chapter 2 (commencing with Section
25 11053) of Division 10 of the Health and Safety Code, an alcoholic
26 beverage, or an intoxicant of any kind, and either sold, delivered,
27 or otherwise furnished to a person another liquid, substance, or

1 material and represented the liquid, substance, or material as a
2 controlled substance, alcoholic beverage, or intoxicant.

3 (e) Committed or attempted to commit robbery or extortion.

4 (f) Caused or attempted to cause damage to school property or
5 private property.

6 (g) Stole or attempted to steal school property or private
7 property.

8 (h) Possessed or used tobacco, or products containing tobacco
9 or nicotine products, including, but not limited to, cigarettes, cigars,
10 miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew
11 packets, and betel. However, this section does not prohibit the use
12 or possession by a pupil of his or her own prescription products.

13 (i) Committed an obscene act or engaged in habitual profanity
14 or vulgarity.

15 (j) Unlawfully possessed or unlawfully offered, arranged, or
16 negotiated to sell drug paraphernalia, as defined in Section 11014.5
17 of the Health and Safety Code.

18 (k) (1) Disrupted school activities or otherwise willfully defied
19 the valid authority of supervisors, teachers, administrators, school
20 officials, or other school personnel engaged in the performance of
21 their duties.

22 (2) Except as provided in Section 48910, a pupil enrolled in
23 kindergarten or any of grades 1 to 3, inclusive, shall not be
24 suspended for any of the acts enumerated in this subdivision, and
25 this subdivision shall not constitute grounds for a pupil enrolled
26 in kindergarten or any of grades 1 to 12, inclusive, to be
27 recommended for expulsion. This paragraph shall become
28 inoperative on July 1, 2018, unless a later enacted statute that
29 becomes operative before July 1, 2018, deletes or extends that
30 date.

31 (l) Knowingly received stolen school property or private
32 property.

33 (m) Possessed an imitation firearm. As used in this section,
34 “imitation firearm” means a replica of a firearm that is so
35 substantially similar in physical properties to an existing firearm
36 as to lead a reasonable person to conclude that the replica is a
37 firearm.

38 (n) Committed or attempted to commit a sexual assault as
39 defined in Section 261, 266c, 286, 288, 288a, or 289 of the Penal

1 Code or committed a sexual battery as defined in Section 243.4
2 of the Penal Code.

3 (o) Harassed, threatened, or intimidated a pupil who is a
4 complaining witness or a witness in a school disciplinary
5 proceeding for purposes of either preventing that pupil from being
6 a witness or retaliating against that pupil for being a witness, or
7 both.

8 (p) Unlawfully offered, arranged to sell, negotiated to sell, or
9 sold the prescription drug Soma.

10 (q) Engaged in, or attempted to engage in, hazing. For purposes
11 of this subdivision, “hazing” means a method of initiation or
12 preinitiation into a pupil organization or body, whether or not the
13 organization or body is officially recognized by an educational
14 institution, that is likely to cause serious bodily injury or personal
15 degradation or disgrace resulting in physical or mental harm to a
16 former, current, or prospective pupil. For purposes of this
17 subdivision, “hazing” does not include athletic events or
18 school-sanctioned events.

19 (r) Engaged in an act of bullying. For purposes of this
20 subdivision, the following terms have the following meanings:

21 (1) “Bullying” means any severe or pervasive physical or verbal
22 act or conduct, including communications made in writing or by
23 means of an electronic act, and including one or more acts
24 committed by a pupil or group of pupils as defined in Section
25 48900.2, 48900.3, or 48900.4, directed toward one or more pupils
26 that has or can be reasonably predicted to have the effect of one
27 or more of the following:

28 (A) Placing a reasonable pupil or pupils in fear of harm to that
29 pupil’s or those pupils’ person or property.

30 (B) Causing a reasonable pupil to experience a substantially
31 detrimental effect on his or her physical or mental health.

32 (C) Causing a reasonable pupil to experience substantial
33 interference with his or her academic performance.

34 (D) Causing a reasonable pupil to experience substantial
35 interference with his or her ability to participate in or benefit from
36 the services, activities, or privileges provided by a school.

37 (2) (A) “Electronic act” means the creation or transmission
38 originated on or off the schoolsite, by means of an electronic
39 device, including, but not limited to, a telephone, wireless
40 telephone, or other wireless communication device, computer, or

1 pager, of a communication, including, but not limited to, any of
2 the following:

3 (i) A message, text, sound, or image.

4 (ii) A post on a social network Internet Web site, including, but
5 not limited to:

6 (I) Posting to or creating a burn page. “Burn page” means an
7 Internet Web site created for the purpose of having one or more
8 of the effects listed in paragraph (1).

9 (II) Creating a credible impersonation of another actual pupil
10 for the purpose of having one or more of the effects listed in
11 paragraph (1). “Credible impersonation” means to knowingly and
12 without consent impersonate a pupil for the purpose of bullying
13 the pupil and such that another pupil would reasonably believe, or
14 has reasonably believed, that the pupil was or is the pupil who was
15 impersonated.

16 (III) Creating a false profile for the purpose of having one or
17 more of the effects listed in paragraph (1). “False profile” means
18 a profile of a fictitious pupil or a profile using the likeness or
19 attributes of an actual pupil other than the pupil who created the
20 false profile.

21 (B) Notwithstanding paragraph (1) and subparagraph (A), an
22 electronic act shall not constitute pervasive conduct solely on the
23 basis that it has been transmitted on the Internet or is currently
24 posted on the Internet.

25 (3) “Reasonable pupil” means a pupil, including, but not limited
26 to, an exceptional needs pupil, who exercises average care, skill,
27 and judgment in conduct for a person of his or her age, or for a
28 person of his or her age with his or her exceptional needs.

29 (s) (1) *Engaged in an act of sexting.*

30 (2) *For purposes of this subdivision, “sexting” means the*
31 *dissemination of, or the solicitation or incitement to disseminate,*
32 *a photograph or other visual recording by a pupil to another pupil*
33 *or to school personnel by means of an electronic act with the*
34 *purpose or effect of humiliating or harassing a pupil. A photograph*
35 *or other visual recording, as described above, shall include the*
36 *depiction of any of the following:*

37 (A) *A minor’s exposed or visible genitals, pubic area, or rectal*
38 *area, or the nipple or areola of a minor female’s breast.*

1 (B) A sexually explicit photograph or other visual recording of
 2 a minor where the minor is identifiable from the photograph or
 3 visual recording or the electronic act.

4 (3) For purposes of this subdivision, “sexting” does not include
 5 a depiction, portrayal, or image that has any serious literary,
 6 artistic, educational, political, or scientific value or that involves
 7 athletic events or school-sanctioned activities.

8 ~~(s)~~

9 (t) A pupil shall not be suspended or expelled for any of the acts
 10 enumerated in this section unless the act is related to a school
 11 activity or school attendance occurring within a school under the
 12 jurisdiction of the superintendent of the school district or principal
 13 or occurring within any other school district. A pupil may be
 14 suspended or expelled for acts that are enumerated in this section
 15 and related to a school activity or school attendance that occur at
 16 any time, including, but not limited to, any of the following:

17 (1) While on school grounds.

18 (2) While going to or coming from school.

19 (3) During the lunch period whether on or off the campus.

20 (4) During, or while going to or coming from, a
 21 school-sponsored activity.

22 ~~(t)~~

23 (u) A pupil who aids or abets, as defined in Section 31 of the
 24 Penal Code, the infliction or attempted infliction of physical injury
 25 to another person may be subject to suspension, but not expulsion,
 26 pursuant to this section, except that a pupil who has been adjudged
 27 by a juvenile court to have committed, as an aider and abettor, a
 28 crime of physical violence in which the victim suffered great bodily
 29 injury or serious bodily injury shall be subject to discipline pursuant
 30 to subdivision (a).

31 ~~(u)~~

32 (v) As used in this section, “school property” includes, but is
 33 not limited to, electronic files and databases.

34 ~~(v)~~

35 (w) For a pupil subject to discipline under this section, a
 36 superintendent of the school district or principal may use his or
 37 her discretion to provide alternatives to suspension or expulsion
 38 that are age appropriate and designed to address and correct the
 39 pupil’s specific misbehavior as specified in Section 48900.5.

40 ~~(w)~~

1 (x) It is the intent of the Legislature that alternatives to
2 suspension or expulsion be imposed against a pupil who is truant,
3 tardy, or otherwise absent from school activities.

4 SEC. 2. Section 51934 of the Education Code is amended to
5 read:

6 51934. (a) Each school district shall ensure that all pupils in
7 grades 7 to 12, inclusive, receive comprehensive sexual health
8 education and HIV prevention education from instructors trained
9 in the appropriate courses. Each pupil shall receive this instruction
10 at least once in junior high or middle school and at least once in
11 high school. This instruction shall include all of the following:

12 (1) Information on the nature of HIV, as well as other sexually
13 transmitted infections, and their effects on the human body.

14 (2) Information on the manner in which HIV and other sexually
15 transmitted infections are and are not transmitted, including
16 information on the relative risk of infection according to specific
17 behaviors, including sexual activities and injection drug use.

18 (3) Information that abstinence from sexual activity and injection
19 drug use is the only certain way to prevent HIV and other sexually
20 transmitted infections and abstinence from sexual intercourse is
21 the only certain way to prevent unintended pregnancy. Instruction
22 shall provide information about the value of delaying sexual
23 activity while also providing medically accurate information on
24 other methods of preventing HIV and other sexually transmitted
25 infections and pregnancy.

26 (4) Information about the effectiveness and safety of all federal
27 Food and Drug Administration (FDA) approved methods that
28 prevent or reduce the risk of contracting HIV and other sexually
29 transmitted infections, including use of antiretroviral medication,
30 consistent with the federal Centers for Disease Control and
31 Prevention.

32 (5) Information about the effectiveness and safety of reducing
33 the risk of HIV transmission as a result of injection drug use by
34 decreasing needle use and needle sharing.

35 (6) Information about the treatment of HIV and other sexually
36 transmitted infections, including how antiretroviral therapy can
37 dramatically prolong the lives of many people living with HIV
38 and reduce the likelihood of transmitting HIV to others.

39 (7) Discussion about social views on HIV and AIDS, including
40 addressing unfounded stereotypes and myths regarding HIV and

1 AIDS and people living with HIV. This instruction shall emphasize
2 that successfully treated HIV-positive individuals have a normal
3 life expectancy, all people are at some risk of contracting HIV,
4 and the only way to know if one is HIV-positive is to get tested.

5 (8) Information about local resources, how to access local
6 resources, and pupils' legal rights to access local resources for
7 sexual and reproductive health care such as testing and medical
8 care for HIV and other sexually transmitted infections and
9 pregnancy prevention and care, as well as local resources for
10 assistance with sexual assault and intimate partner violence.

11 (9) Information about the effectiveness and safety of all
12 FDA-approved contraceptive methods in preventing pregnancy,
13 including, but not limited to, emergency contraception. Instruction
14 on pregnancy shall include an objective discussion of all legally
15 available pregnancy outcomes, including, but not limited to, all of
16 the following:

17 (A) Parenting, adoption, and abortion.

18 (B) Information on the law on surrendering physical custody
19 of a minor child 72 hours of age or younger, pursuant to Section
20 1255.7 of the Health and Safety Code and Section 271.5 of the
21 Penal Code.

22 (C) The importance of prenatal care.

23 (10) Information about sexual harassment, sexual assault,
24 adolescent relationship abuse, intimate partner violence, and sex
25 trafficking.

26 (11) *Information about sexting, including, but not limited to,*
27 *all of the following:*

28 (A) *The legal consequences and penalties for sharing sexually*
29 *suggestive or explicit materials, including, but not limited to,*
30 *applicable federal and state statutes.*

31 (B) *The nonlegal consequences of sharing sexually suggestive*
32 *or explicit materials, including, but not limited to, the effect on*
33 *relationships, loss of educational and employment opportunities,*
34 *and being barred or removed from school programs and*
35 *extracurricular activities.*

36 (C) *The potential, based upon the unique characteristics of*
37 *cyberspace and the Internet, of long-term and unforeseen*
38 *consequences for sharing sexually suggestive or explicit materials.*

1 (D) *The possible connection between bullying and*
2 *cyber-bullying and pupils sharing sexually suggestive or explicit*
3 *materials.*

4 (b) A school district may provide comprehensive sexual health
5 education ~~or~~ *and* HIV prevention education consisting of
6 age-appropriate instruction earlier than grade 7 using instructors
7 trained in the appropriate courses. A school district that elects to
8 offer comprehensive sexual health education ~~or~~ *and* HIV prevention
9 education earlier than grade 7 may provide age appropriate and
10 medically accurate information on any of the general topics
11 contained in paragraphs (1) to ~~(10)~~, (11), inclusive, of subdivision
12 (a).

13 (c) *For purposes of this section, “sexting” means sending or*
14 *receiving sexually explicit messages, images, or videos by means*
15 *of an electronic communication.*

16 SEC. 3. If the Commission on State Mandates determines that
17 this act contains costs mandated by the state, reimbursement to
18 local agencies and school districts for those costs shall be made
19 pursuant to Part 7 (commencing with Section 17500) of Division
20 4 of Title 2 of the Government Code.