



# CLIENT NEWS BRIEF

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## BILL EXPANDS STATUTE THAT CRIMINALIZES DISRUPTIVE PRESENCE AT SCHOOLS

On August 3, 2011, the Governor signed into law Assembly Bill (AB) 123, a bill aimed at limiting disruptions that threaten students' immediate physical safety when arriving at, attending, or leaving school. Penal Code section 626.8 previously made it a misdemeanor for any person to cause disruption at school, remain after being asked to leave, reenter after being asked to leave, or otherwise establish a continued pattern of unauthorized entry. AB 123 adds to section 626.8 by making it a misdemeanor to willfully and knowingly create a disruption with intent to threaten the immediate physical safety of students in preschool through grade 8.

Prior to the enactment of AB 123, the scope of section 626.8 was analyzed in an opinion by the Ninth Circuit Court of Appeals. In *Center for Bio-ethical Reform, Inc. v. Los Angeles County Sheriff Dept.* (9th Cir. 2008) 533 F.3d 780, as junior high students were arriving at school, representatives from the Center for Bio-ethical Reform, Inc. (CBER) drove vehicles with graphic photographic images of aborted fetuses on public streets around the school's perimeter. As a result, students stopped on sidewalks and "momentarily" stood in the middle of streets to view the images, a few students cried, a group of students planned to throw rocks at the signs, and at least one teacher discussed the images in class. The sheriff's department arrived to handle the incident and, citing section 626.8, asked the representatives of CBER to leave with their signs.

The Ninth Circuit held that application of section 626.8 was improper, specifically noting that the activists' conduct was not sufficiently disruptive to be restricted under section 626.8.

In direct response to the Ninth Circuit's decision, AB 123 expands section 626.8 to include "any person who comes into any school building or upon any school grounds, or adjacent street, sidewalk, or public way, and willfully and knowingly creates a disruption with the intent to threaten the immediate physical safety of any pupil in preschool, kindergarten or any grades 1 to 8 inclusive, arriving at, attending, or leaving from school grounds." Notably, former section 626.8's express provision, that it "shall not be utilized to impinge upon the lawful exercise of constitutionally protected rights of freedom of speech or assembly," remains in the law following the enactment of AB 123.

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School districts are cautioned that section 626.8 does not apply to schools that operate grades 9 through 12 exclusively, and that the constitutionality of the revised code section has not yet been tested. Further, given statements made in the Ninth Circuit's *Center for Bio-ethical Reform, Inc.* holding, it is possible that even revised section 626.8 would not apply to the type of speech at issue in that case. Specifically, the Ninth Circuit noted that an audience's response to the content of speech is not a justification for limiting that speech, even when the targeted audience is children.

If you have any questions regarding AB 123 or other campus disruption or speech laws, please contact one of our [eight offices](#) located statewide or consult our [website](#).

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