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CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 1219

Introduced by Assembly Members Member Simitian and Pescetti
(Principal coauthors: Assembly Members Frommer and Pescetti)

February 23, 2001

An act to amend ~~Sections 814, 815, 816, 950, 953, and 959 of, and to add Section 811 to, Section 530.6 of the Penal Code, relating to criminal procedure.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1219, as amended, Simitian. Criminal procedure: identity.

Existing law authorizes a person who reasonably believes that he or she is a victim of identity theft to petition a court for an expedited judicial determination of his or her factual innocence, where the perpetrator of the identity theft was arrested for or convicted of a crime under the victim's identity or where the victim's identity has been mistakenly associated with a record of criminal conviction. Existing law provides that a judicial determination of factual innocence may be heard and determined upon material, relevant, and reliable information submitted by the parties. Existing law requires a court that determines

the petitioner is factually innocent to issue an order certifying the determination of factual innocence.

This bill would authorize the alleged victim of identity theft to petition for, or the court, on its own motion or upon application of the prosecuting attorney, to move for, an expedited judicial determination of the factual innocence of an alleged victim of identity theft, where the perpetrator of the identity theft was arrested for, cited for, or convicted of a crime under the victim's identity, or where a criminal complaint has been filed against the perpetrator in the victim's name, or where the victim's identity has been mistakenly associated with a record of criminal conviction. This bill would also increase the sources upon which a determination of factual innocence may be made to include material, relevant, and reliable information ordered to be part of the record by the court. This bill would authorize the court that has issued a finding of factual innocence to order the name and associated personal identifying information contained in court records, files, and indexes accessible by the public deleted, sealed, or labeled to show that the data is impersonated and does not reflect the defendant's identity.

~~Under existing law, warrants of arrest are issued in the name of the defendant, or in any name, if the actual name of the defendant is unknown. Under existing law, a person must be named in an accusatory pleading to commence a prosecution, and fictitious or erroneous names must be supplemented with true names, when they are identified.~~

~~This bill would define a corpus identity as a unique identifier for a biologically or biometrically defined set of characteristics sufficient to distinguish a person described by those characteristics from any other person with reasonable certainty. This bill would allow a complaint or a warrant for arrest to be issued for a person by name, corpus identity, or both. This bill would provide for the sufficiency of an accusatory pleading that uses only a corpus identity or a corpus identity with a name. This bill would also require the addition of a true name, once identified, to any accusatory pleading, whether the defendant was previously identified by erroneous or fictitious name, by corpus identity, or by both an erroneous or fictitious name and a corpus identity.~~

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

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

1 SECTION 1. —Section 811 is added to the Penal Code, to read:
2

1 *SECTION 1. Section 530.6 of the Penal Code is amended to*
2 *read:*

3 530.6. (a) A person who has learned or reasonably suspects
4 that his or her personal identifying information has been
5 unlawfully used by another, as described in subdivision (a) of
6 Section 530.5, may initiate a law enforcement investigation by
7 contacting the local law enforcement agency that has jurisdiction
8 over his or her actual residence, which shall take a police report of
9 the matter, provide the complainant with a copy of that report, and
10 begin an investigation of the facts or, if the suspected crime was
11 committed in a different jurisdiction, refer the matter to the law
12 enforcement agency where the suspected crime was committed for
13 an investigation of the facts.

14 (b) A person who reasonably believes that he or she is the
15 victim of identity theft may petition a court, *or the court, on its*
16 *own motion or upon application of the prosecuting attorney, may*
17 *move*, for an expedited judicial determination of his or her factual
18 innocence, where the perpetrator of the identity theft was arrested
19 for, *cited for*, or convicted of a crime under the victim's identity,
20 *or where a criminal complaint has been filed against the*
21 *perpetrator in the victim's name*, or where the victim's identity has
22 been mistakenly associated with a record of criminal conviction.
23 Any judicial determination of factual innocence made pursuant to
24 this section may be heard and determined upon declarations,
25 affidavits, police reports, or other material, relevant, and reliable
26 information submitted by the parties *or ordered to be part of the*
27 *record by the court*. Where the court determines that the petition
28 *or motion* is meritorious and that there is no reasonable cause to
29 believe that the ~~petitioner~~ *victim* committed the offense for which
30 the perpetrator of the identity theft was arrested ~~or~~, *cited*,
31 convicted, *or subject to a criminal complaint in the victim's name,*
32 *or that the victim's identity has been mistakenly associated with a*
33 *record of criminal conviction*, the court shall find the ~~petitioner~~
34 *victim* factually innocent of that offense. If the ~~petitioner~~ *victim* is
35 found factually innocent, the court shall issue an order certifying
36 this determination. ~~The Judicial Council of California shall~~
37 ~~develop a form for use in issuing an order pursuant to these~~
38 ~~provisions. A court issuing a determination of factual innocence~~
39 ~~pursuant to this section may at any time vacate that determination~~
40 ~~if the petition, or any information submitted in support of the~~

1 ~~petition, is found to contain any material misrepresentation or~~
2 ~~fraud.~~

3 *(c) After a court has issued a determination of factual*
4 *innocence pursuant to this section, the court may order the name*
5 *and associated personal identifying information contained in*
6 *court records, files, and indexes accessible by the public deleted,*
7 *sealed, or labeled to show that the data is impersonated and does*
8 *not reflect the defendant's identity.*

9 *(d) A court that has issued a determination of factual innocence*
10 *pursuant to this section may at any time vacate that determination*
11 *if the petition, or any information submitted in support of the*
12 *petition, is found to contain any material misrepresentation or*
13 *fraud.*

14 *(e) The Judicial Council of California shall develop a form for*
15 *use in issuing an order pursuant to this section.*

16 ~~811. (a) For the purpose of this code:~~

17 ~~(1) "Corpus identity" means any unique alphanumeric that is~~
18 ~~intended to reference a specific biometric symbol or biologic~~
19 ~~symbol or copy thereof, contained on any record or in any file~~
20 ~~maintained by any federal, state, or local law enforcement agency,~~
21 ~~laboratory, or court.~~

22 ~~(2) "Biometric symbol" means any image or recording,~~
23 ~~produced by the interaction of a person with an object, medium,~~
24 ~~instrument or device, having sufficient characteristics so as to~~
25 ~~distinguish that person, to a reasonable certainty, from all other~~
26 ~~persons.~~

27 ~~(3) "Biologic symbol" means any alphanumeric, analog or~~
28 ~~digital signal, image, or representation that is caused or produced~~
29 ~~by a chemical, mechanical, radiological, biological, or physical~~
30 ~~process or analysis of fluid, cell, tissue, or waste product from a~~
31 ~~person, having sufficient characteristics so as to distinguish that~~
32 ~~person, to a reasonable certainty, from all other persons.~~

33 ~~(b) A complaint shall identify the defendant by name, by both~~
34 ~~name and corpus identity, or by corpus identity.~~

35 ~~(c) A court, upon belief that the name listed on the complaint~~
36 ~~was derived from the fraudulent assertion of another's identity by~~
37 ~~the defendant, may strike that name from the complaint at any time~~
38 ~~and without the defendant being present, provided that a corpus~~
39 ~~identity for the defendant was listed on the original complaint, or~~
40 ~~a corpus identity for the defendant is offered by the people.~~

~~(d) A court, upon belief that the name listed on the complaint was listed in error, may strike that name from the complaint at any time and without the defendant being present, provided that a corpus identity for the defendant is named on complaint, or a corpus identity for the defendant is offered by the people.~~

~~(e) Having stricken a name from a complaint pursuant to subdivision (c) or (d), the court may, at any time thereafter and without the defendant being present, amend the complaint to identify the defendant by any name by which the person distinguished by the corpus identity is believed to be known or by the corpus identity offered by the people.~~

~~(f) Having stricken a defendant's name from a complaint pursuant to subdivision (c), the court may issue orders using the corpus identity listed on the complaint to identify the defendant, unless the defendant has been named on the complaint pursuant to subdivision (c), in which case orders shall list both the defendant's name and corpus identity.~~

~~(g) A person, who uses the name of another during a detention or arrest, may be identified in a subsequent complaint by a corpus identity only. Having received a complaint so filed, the court may:~~

~~(1) Amend the complaint, at any time thereafter and without the defendant being present, to identify the defendant by any name by which the person distinguished by the corpus identity is believed to be known.~~

~~(2) Issue orders using the corpus identity listed on the complaint to identify the defendant, unless the defendant has been named on the complaint pursuant to paragraph (1), in which case orders shall list both the defendant's name and corpus identity.~~

~~SEC. 2. Section 814 of the Penal Code is amended to read:~~

~~814. A warrant of arrest issued under Section 813 may be in substantially the following form:~~

~~—~~

~~County of _____~~

~~The people of the State of California to any peace officer of said State:~~

~~Complaint on oath having this day been laid before me that the crime of _____ (designating it generally) has been committed and accusing _____ (naming defendant, corpus identity alphanumeric, or both) thereof, you are therefore commanded forthwith to arrest the above named defendant and bring him before me at _____~~

~~(naming the place), or in case of my absence or inability to act,
before the nearest or most accessible magistrate in this county.~~

~~— Dated at _____ (place) this _____ day of _____,
20 ____.~~

~~@@@ (Signature and full official title of magistrate.)~~

~~SEC. 3. Section 815 of the Penal Code is amended to read:~~

~~815. A warrant of arrest shall specify the name of the
defendant or, if it is unknown to the magistrate, judge, justice, or
other issuing authority, the defendant may be designated therein by
any name or corpus identity. It shall also state the time of issuing
it, and the city or county where it is issued, and shall be signed by
the magistrate, judge, justice, or other authority issuing it with the
title of his office and the name of the court or other issuing agency.~~

~~SEC. 4. Section 816 of the Penal Code is amended to read:~~

~~816. A warrant of arrest shall be directed generally to any
peace officer, or to any public officer or employee authorized to
serve process where the warrant is for a violation of a statute or
ordinance which such person has the duty to enforce, in the state,
and may be executed by any of those officers to whom it may be
delivered.~~

~~When a warrant of arrest has been delivered to a peace officer
and the person named or identified by corpus identity in the
warrant is otherwise lawfully in the custody of the peace officer,
the warrant may be executed by the peace officer or by any clerk
of a city or county jail authorized to act and acting under the peace
officer's direction.~~

~~SEC. 5. Section 950 of the Penal Code is amended to read:~~

~~950. The accusatory pleading must contain:~~

~~1. The title of the action, specifying the name of the court to
which the same is presented, and the names of the parties, although
the defendant may be identified by name, corpus identity, or both;~~

~~2. A statement of the public offense or offenses charged
therein.~~

~~SEC. 6. Section 953 of the Penal Code is amended to read:~~

~~953. When a defendant is charged by a fictitious or erroneous
name, by a corpus identity, or by both a fictitious or erroneous
name and a corpus identity, and in any stage of the proceedings his~~

1 ~~true name is discovered, it must be inserted in the subsequent~~
2 ~~proceedings, referring to the fact of his being charged by the name~~
3 ~~or corpus identity or both mentioned in the accusatory pleading.~~

4 ~~SEC. 7. Section 959 of the Penal Code is amended to read:~~

5 ~~959. The accusatory pleading is sufficient if it can be~~
6 ~~understood therefrom:~~

7 ~~1. That it is filed in a court having authority to receive it, though~~
8 ~~the name of the court be not stated.~~

9 ~~2. If an indictment, that it was found by a grand jury of the~~
10 ~~county in which the court was held, or if an information, that it was~~
11 ~~subscribed and presented to the court by the district attorney of the~~
12 ~~county in which the court was held.~~

13 ~~3. If a complaint, that it is made and subscribed by some natural~~
14 ~~person and sworn to before some officer entitled to administer~~
15 ~~oaths.~~

16 ~~4. That the defendant is named, or if his name is unknown, that~~
17 ~~he is described by a fictitious name or corpus identity, with a~~
18 ~~statement that his true name is to the grand jury, district attorney,~~
19 ~~or complainant, as the case may be, unknown.~~

20 ~~5. That the offense charged therein is triable in the court in~~
21 ~~which it is filed, except in case of a complaint filed with a~~
22 ~~magistrate for the purposes of a preliminary examination.~~

23 ~~6. That the offense was committed at some time prior to the~~
24 ~~filing of the accusatory pleading.~~