

Assembly Bill No. 1219

CHAPTER 851

An act to amend Section 530.6 of the Penal Code, relating to criminal procedure.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 25, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1219, 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.

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

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

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

(b) A person who reasonably believes that he or she is the victim of identity theft may petition a court, or the court, on its own motion or upon application of the prosecuting attorney, may move, for an expedited judicial determination of his or her factual innocence, 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. Any judicial determination of factual innocence made pursuant to this section may be heard and determined upon declarations, affidavits, police reports, or other material, relevant, and reliable information submitted by the parties or ordered to be part of the record by the court. Where the court determines that the petition or motion is meritorious and that there is no reasonable cause to believe that the victim committed the offense for which the perpetrator of the identity theft was arrested, cited, convicted, or subject to a criminal complaint in the victim's name, or that the victim's identity has been mistakenly associated with a record of criminal conviction, the court shall find the victim factually innocent of that offense. If the victim is found factually innocent, the court shall issue an order certifying this determination.

(c) After a court has issued a determination of factual innocence pursuant to this section, the court may 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.

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

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

