

AMENDED IN ASSEMBLY APRIL 1, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1858**

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**Introduced by Assembly Member La Suer**

January 30, 2002

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An act to ~~repeal and add Section 1203.047~~ *add Chapter 6.8 (commencing with Section 13849) to Title 6 of Part 4 of the Penal Code, relating to high technology crimes.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1858, as amended, La Suer. High technology crimes: ~~probation.~~

*Existing law generally creates the High Technology Theft Apprehension and Prosecution Program within the Office of Criminal Justice Planning. The purpose of the program is to provide local law enforcement and district attorneys with the tools necessary to successfully interdict the promulgation of high technology crime. Existing law creates the High Technology Theft Apprehension and Prosecution Program Trust Fund. Moneys in the trust fund are required to be expended to fund programs to enhance the capacity of local law enforcement and prosecutors to deter, investigate, and prosecute high technology-related crimes.*

*This bill would create the High Technology Laboratory Trust Fund as a special account within the General Fund to be administered by the Office of Criminal Justice Planning. Money in the fund would be required to be used, upon an appropriation by the Legislature, for the purposes of defraying the costs incurred for computer forensic analysis or other analysis of electronic or computer evidence related to*

*investigating and prosecuting high technology offenses, as defined. The court would be required to order payment by the defendant convicted of a high technology offense, a forensic laboratory analysis fee, as specified, not to exceed \$25,000.*

~~Existing law specifies certain circumstances where a person convicted of a high technology crime, as specified, may be granted probation. Existing law also provides that the period of probation shall not be less than 3 years.~~

~~This bill would repeal these provisions, and instead provide for the imposition of specified conditions of probation for persons convicted of crimes accomplished with the aid of a computer, computer network, electronic mail, or the Internet. This bill would require restitution to crime victims, as specified, and would make technical changes to criminal procedures involving high technology crimes. This bill would impose a laboratory analysis fee, as specified, which would be deposited into the High Technology Laboratory Trust Fund as established by this bill.~~

~~By increasing the costs to local governments for increased probation periods, this bill would impose a state-mandated local program.~~

~~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 no reimbursement is required by this act for a specified reason.~~

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

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

1 SECTION 1.—The Legislature finds that rapid technological  
2 change has provided new means of committing certain crimes and  
3 has created new offenses. Although the Legislature has passed  
4 laws defining that illegal conduct, it is equally important to  
5 provide courts and probation officers with tools they can use to  
6 discourage recidivism, foster rehabilitation, and protect the  
7 public. The current Section 1203.047 provides a blunt instrument  
8 to achieve these objectives for a small segment of high technology  
9 offenders. This act repeals that statute and replaces it with a more  
10 comprehensive scheme.



1 This act requires courts, as part of imposing terms of probation,  
2 to prohibit defendants from engaging in various acts and practices  
3 during their probation period. Some of the acts prohibited by this  
4 act, including concealing the source of electronic  
5 communications, communicating in real-time over the Internet, as  
6 in “chat,” and the use of encryption, are targeted because the acts  
7 enable new offenses or the concealment of same. Still other  
8 provisions, including limiting the business activities of computer  
9 intruders, serve to steer offenders away from activities associated  
10 with their offenses that may predispose them to repeat their crimes  
11 or provide them with the tools and information they need to do so.  
12 Business activities may also interfere with offenders’  
13 rehabilitation and reintegration into the community by appearing  
14 to reward them for their crimes and discouraging them from  
15 seeking other gainful employment. Some of the disclosures  
16 required by this act, including requiring defendants convicted of  
17 auction fraud to reveal their convictions when selling items on the  
18 Internet, will protect the public and make it more difficult for  
19 offenders to commit new crimes. Each of the restrictions on an  
20 offender’s activities and the compelled disclosure of certain facts  
21 are necessary to achieve the purposes set forth above.

22 The Legislature also recognizes that the investigation and  
23 prosecution of these crimes exacts an unusually heavy toll on  
24 victims and law enforcement. Victims may need to halt their  
25 business activities to preserve evidence and secure their computers  
26 from further intrusion. Victims may lose customers and business  
27 opportunities, be required to compensate third parties, and suffer  
28 other losses not directly connected with the offense. This act  
29 requires offenders to make restitution for direct and indirect losses  
30 alike. Law enforcement may incur tens of thousands of dollars in  
31 costs to locate, seize, preserve, analyze, and present computer  
32 evidence. This legislation imposes a laboratory analysis fee to be  
33 deposited into the High Technology Laboratory Trust Fund to be  
34 administered by the Office of Criminal Justice Planning.

35 ~~SEC. 2.—Section 1203.047 of the Penal Code is repealed.~~

36 ~~SEC. 3.—Section 1203.047 is added to the Penal Code, to read:~~  
37 ~~1203.047.—(a) This section applies where probation is granted~~  
38 ~~to a defendant who is convicted of a violation of Section 502,~~  
39 ~~502.7, 593d, or 593e. It also applies to a conviction of Section~~  
40 ~~288.2, 311.1, 311.2, 311.3, 311.4, 311.11, 313.1, 350, 422, 474,~~



1 ~~475, 476, 484e, 484g, 529, 529.5, 530.5, 535, or 646.9, where the~~  
2 ~~crime was accomplished with the aid of a computer, computer~~  
3 ~~network, electronic mail, or the Internet.~~

4 ~~(b) The term of probation shall be not less than 36 months for~~  
5 ~~any felony violation of this section.~~

6 ~~(c) The defendant shall make full restitution to the victim for~~  
7 ~~all losses as otherwise provided for by law. In calculating those~~  
8 ~~losses, the court shall include all indirect and direct economic loss~~  
9 ~~suffered by the victim, including, but not limited to, lost profits,~~  
10 ~~costs reasonably incurred by the victim for storing evidence in a~~  
11 ~~commercial storage facility, costs reasonably incurred by the~~  
12 ~~victim or others to restore or repair computers and computer~~  
13 ~~networks damaged or otherwise altered or impaired as a result of~~  
14 ~~the offense, and losses reasonably incurred by the victim in~~  
15 ~~compensating, paying damages to, or indemnifying third parties~~  
16 ~~based on losses caused by the offense.~~

17 ~~(d) The court may impose terms of probation that reasonably~~  
18 ~~restrict the use by the defendant of technology that the defendant~~  
19 ~~used to commit the offense.~~

20 ~~(e) The court shall impose the following terms of probation~~  
21 ~~unless, upon a showing of good cause, the court finds the term of~~  
22 ~~probation to be inappropriate:~~

23 ~~(1) If the defendant is convicted of violating Section 422, 529,~~  
24 ~~or 646.9, or any other felony violation where the defendant~~  
25 ~~concealed the source, destination, or content of an electronic~~  
26 ~~communication in committing or aiding in the commission of the~~  
27 ~~offense:~~

28 ~~(A) The defendant shall not intentionally conceal the source,~~  
29 ~~destination, or content of any electronic communication~~  
30 ~~transmitted or otherwise sent by the defendant.~~

31 ~~(B) The defendant shall not provide false information about his~~  
32 ~~or her identity to any provider of an “electronic communications~~  
33 ~~service” as defined under paragraph (15) of Section 2510 of Title~~  
34 ~~18 of the United States Code when purchasing, subscribing to, or~~  
35 ~~agreeing to purchase or subscribe to any service from that provider~~  
36 ~~that allows the defendant to send or receive electronic~~  
37 ~~communications.~~

38 ~~(C) The defendant shall disclose to the defendant’s probation~~  
39 ~~officer all electronic mail accounts, all Internet accounts, and any~~  
40 ~~other means of access to any computer or computer network, all~~



1 ~~passwords and access codes. The defendant shall consent to the~~  
2 ~~search of that electronic mail and Internet accounts at any time and~~  
3 ~~the seizure of any information or data contained therein without a~~  
4 ~~search warrant or probable cause.~~

5 ~~(2) If the defendant is convicted of any offense involving fraud~~  
6 ~~in the sale or offering for sale of any item via the Internet,~~  
7 ~~including, but not limited to, any violation of Section 535~~  
8 ~~involving the Internet:~~

9 ~~(A) In any advertisement, notice, or offer for sale or purchase~~  
10 ~~displayed by the defendant on the Internet, the defendant shall~~  
11 ~~prominently disclose his or her true identity, including residence~~  
12 ~~address and telephone number, along with the fact that the~~  
13 ~~defendant is on probation for having committed that offense.~~

14 ~~(B) The defendant shall not intentionally conceal the source,~~  
15 ~~destination, or content of any electronic communication~~  
16 ~~transmitted or otherwise sent by the defendant.~~

17 ~~(C) The defendant shall not provide false information about his~~  
18 ~~or her identity to any provider of an “electronic communications~~  
19 ~~service” as defined under paragraph (15) of Section 2510 of Title~~  
20 ~~18 of the United States Code when purchasing, subscribing to, or~~  
21 ~~agreeing to purchase or subscribe to any service from that provider~~  
22 ~~that allows the defendant to send or receive electronic~~  
23 ~~communications.~~

24 ~~(D) The defendant shall disclose to the defendant’s probation~~  
25 ~~officer all electronic mail accounts, all Internet accounts, and any~~  
26 ~~other means of access to any computer or computer network, all~~  
27 ~~passwords and access codes. The defendant shall consent to the~~  
28 ~~search of that electronic mail and Internet accounts at any time and~~  
29 ~~the seizure of any information or data contained therein without a~~  
30 ~~search warrant or probable cause.~~

31 ~~(3) If the defendant is convicted of violating Section 502 or~~  
32 ~~502.7:~~

33 ~~(A) The defendant shall not do any of the following:~~

34 ~~(i) Provide computer or information security services to the~~  
35 ~~public, including securing or testing the security of computers or~~  
36 ~~computer networks, for compensation.~~

37 ~~(ii) Disclose or provide information about the security of~~  
38 ~~computers or computer networks to others for compensation.~~



1 ~~(iii) Deliver presentations concerning the security of~~  
2 ~~computers or computer networks to the public or others for~~  
3 ~~compensation.~~

4 ~~(iv) Possess software used primarily to gain unauthorized~~  
5 ~~access to computers or computer networks or to ascertain means~~  
6 ~~of gaining that unauthorized access.~~

7 ~~(v) Possess software designed to encrypt data or electronic~~  
8 ~~communications except as allowed by the court after notice to the~~  
9 ~~prosecution and a hearing.~~

10 ~~(B) The defendant shall not intentionally conceal the source,~~  
11 ~~destination, or content of any electronic communication~~  
12 ~~transmitted or otherwise sent by the defendant.~~

13 ~~(C) The defendant shall not provide false information about his~~  
14 ~~or her identity to any provider of an “electronic communications~~  
15 ~~service” as defined under paragraph (15) of Section 2510 of Title~~  
16 ~~18 of the United States Code when purchasing, subscribing to, or~~  
17 ~~agreeing to purchase or subscribe to any service from that provider~~  
18 ~~that allows the defendant to send or receive electronic~~  
19 ~~communications.~~

20 ~~(D) The defendant shall disclose to the defendant’s probation~~  
21 ~~officer all electronic mail accounts, all Internet accounts, and any~~  
22 ~~other means of access to any computer or computer network, all~~  
23 ~~passwords and access codes. The defendant shall consent to the~~  
24 ~~search of that electronic mail and Internet accounts at any time and~~  
25 ~~the seizure of any information or data contained therein without a~~  
26 ~~search warrant or probable cause.~~

27 ~~(4) If the defendant is convicted of violating Section 350, the~~  
28 ~~defendant shall not:~~

29 ~~(A) Infringe copyrights for software or intentionally aid in the~~  
30 ~~infringement of those copyrights by others.~~

31 ~~(B) Engage in the sale or distribution of software except upon~~  
32 ~~court approval after notice and hearing.~~

33 ~~(5) If the defendant is convicted of violating Section 593d or~~  
34 ~~593e:~~

35 ~~(A) The defendant shall not possess an e-prom burner.~~

36 ~~(B) The defendant shall not possess software designed to~~  
37 ~~facilitate the programming of cable e-prom chips or satellite access~~  
38 ~~cards.~~

39 ~~(C) The defendant shall not possess any addressable~~  
40 ~~multichannel video or information device, as defined in~~



1 ~~subdivision (b) of Section 593d, not assigned to the defendant's~~  
2 ~~residence by the multichannel video or information provider, as~~  
3 ~~defined in subdivision (i) of Section 593g. The defendant shall not~~  
4 ~~possess more than one direct broadcast satellite system access card~~  
5 ~~per satellite system receiver allowed under this subdivision.~~

6 ~~(6) If the defendant is convicted of violating Section 288.2,~~  
7 ~~311.1, 311.2, 311.3, 311.4, 311.11 or 313.1, and the violation was~~  
8 ~~accomplished with the aid of a computer, computer network,~~  
9 ~~electronic mail, or the Internet:~~

10 ~~(A) The defendant shall not intentionally conceal the source,~~  
11 ~~destination, or content of any electronic communication~~  
12 ~~transmitted or otherwise sent by the defendant.~~

13 ~~(B) The defendant shall not knowingly engage in any real-time~~  
14 ~~communication over the Internet with anyone who identifies~~  
15 ~~himself or herself as a minor or anyone whom the defendant knows~~  
16 ~~to be a minor, including "chat" and "instant messaging" forms of~~  
17 ~~communication, unless the court or the probation department has~~  
18 ~~allowed the defendant to communicate with that minor. This~~  
19 ~~provision does not prohibit the use of electronic mail.~~

20 ~~(C) The defendant shall not knowingly engage in any~~  
21 ~~communication over the Internet, including by electronic mail,~~  
22 ~~with anyone concerning the current or planned possession,~~  
23 ~~production, preparation, publication, exchange, exhibition, or~~  
24 ~~distribution by the defendant or any party to that communication~~  
25 ~~of any matter depicting a person under 18 years of age personally~~  
26 ~~engaging in or personally simulating sexual conduct as defined in~~  
27 ~~Section 311.4.~~

28 ~~(D) The defendant shall participate in a counseling program~~  
29 ~~relating to the commission of the offense by that defendant.~~

30 ~~(E) The defendant shall not provide false information about his~~  
31 ~~or her identity to any provider of an "electronic communications~~  
32 ~~service" as defined under paragraph (15) of Section 2510 of Title~~  
33 ~~18 of the United States Code when purchasing, subscribing to, or~~  
34 ~~agreeing to purchase or subscribe to any service from that provider~~  
35 ~~that allows the defendant to send or receive electronic~~  
36 ~~communications.~~

37 ~~(F) The defendant shall disclose to the defendant's probation~~  
38 ~~officer all electronic mail accounts, all Internet accounts, and any~~  
39 ~~other means of access to any computer or computer network, all~~  
40 ~~passwords and access codes. The defendant shall consent to the~~



1 search of that electronic mail and Internet accounts at any time and  
2 the seizure of any information or data contained therein without a  
3 search warrant or probable cause.

4 ~~(G) The defendant shall not possess software designed to~~  
5 ~~encrypt data or electronic communications except as allowed by~~  
6 ~~the court after notice to the prosecution and a hearing.~~

7 ~~(7) If the defendant is convicted of a violation of Section 474,~~  
8 ~~475, 476, 484e, 484g, 529, 529.5, or 530.5, and the violation was~~  
9 ~~accomplished with the aid of a computer, computer network,~~  
10 ~~electronic mail, or the Internet:~~

11 ~~(A) The defendant shall not possess software designed for~~  
12 ~~manufacturing checks or blank check paper.~~

13 ~~(B) The defendant shall not possess a scanner or digital camera.~~

14 ~~(C) The defendant shall not possess an access card reader or an~~  
15 ~~access card encoder.~~

16 ~~(D) The defendant shall obtain approval from the probation~~  
17 ~~department prior to accepting any employment that includes the~~  
18 ~~legitimate acquisition of personal identifying information.~~

19 ~~(E) The defendant shall not intentionally conceal the source,~~  
20 ~~destination, or content of any electronic communication~~  
21 ~~transmitted or otherwise sent by the defendant.~~

22 ~~(F) The defendant shall not provide false information about his~~  
23 ~~or her identity to any provider of an “electronic communications~~  
24 ~~service” as defined under paragraph (15) of Section 2510 of Title~~  
25 ~~18 of the United States Code when purchasing, subscribing to, or~~  
26 ~~agreeing to purchase or subscribe to any service from that provider~~  
27 ~~that allows the defendant to send or receive electronic~~  
28 ~~communications.~~

29 ~~(G) The defendant shall disclose to the defendant’s probation~~  
30 ~~officer all electronic mail accounts, all Internet accounts, and any~~  
31 ~~other means of access to any computer or computer network, all~~  
32 ~~passwords and access codes. The defendant shall consent to the~~  
33 ~~search of that electronic mail and Internet accounts at any time and~~  
34 ~~the seizure of any information or data contained therein without a~~  
35 ~~search warrant or probable cause.~~

36 ~~(f) (1)~~

37 *SECTION 1. Chapter 6.8 (commencing with Section 13849)*  
38 *is added to Title 6 of Part 4 of the Penal Code, to read:*

39



1 CHAPTER 6.8. THE HIGH TECHNOLOGY LABORATORY TRUST FUND

2 13849. (a) The High Technology Laboratory Trust Fund is  
3 hereby created as a special account within the General Fund, to be  
4 administered by the Office of Criminal Justice Planning. Money  
5 in the fund shall, upon appropriation by the Legislature, be used  
6 for the purposes of defraying the costs incurred for computer  
7 forensic analysis or other analysis of electronic or computer  
8 evidence related to investigating and prosecuting high-technology  
9 offenses, as defined in subdivision ~~(h)~~ (c).

10 ~~(2)~~

11 (b) In addition to any other fine, restitution fine or order of  
12 restitution, the court shall order payment by the defendant  
13 convicted of an offense described in subdivision ~~(a)~~ (c) of a  
14 minimum forensic computer laboratory analysis fee, if an analysis  
15 was conducted in the case, for the reasonable costs incurred for  
16 computer forensic analysis or other analysis of electronic or  
17 computer evidence, not to exceed twenty-five thousand dollars  
18 (\$25,000) per case, including cases where the defendant is not  
19 convicted of a felony but is convicted of a misdemeanor. The court  
20 may reduce or waive this fee upon a finding that the defendant does  
21 not have the ability to pay that fee. The moneys deposited with the  
22 county treasurer pursuant to this section shall be transferred to the  
23 Controller for deposit in the High Technology Laboratory Trust  
24 Fund. This fee shall not be assessed unless the request for the fee  
25 is included in an indictment or in an information or other  
26 accusatory pleading filed before trial.

27 ~~(g) If the defendant is convicted of a high-technology related~~  
28 ~~offense not otherwise specified in this section and the offense is~~  
29 ~~designated as high-technology related offense in an indictment or~~  
30 ~~in an information or other accusatory pleading filed before trial,~~  
31 ~~the court shall impose as a term of probation, the fee specified in~~  
32 ~~subdivision (f), and may impose terms of probation that~~  
33 ~~reasonably restrict the use by the defendant of technology that the~~  
34 ~~defendant used to commit the offense.~~

35 ~~(h)~~

36 (c) For purposes of this section, a “high-technology related  
37 offense” is an offense committed with the aid of a computer,  
38 computer network, electronic mail, or the Internet.

39 ~~(i)~~



1 (d) For purposes of this section, the terms “computer system”  
2 and “computer network” are to be construed as they are defined  
3 in Section 502.

4 ~~SEC. 4.—No reimbursement is required by this act pursuant to~~  
5 ~~Section 6 of Article XIII B of the California Constitution because~~  
6 ~~the only costs that may be incurred by a local agency or school~~  
7 ~~district will be incurred because this act creates a new crime or~~  
8 ~~infraction, eliminates a crime or infraction, or changes the penalty~~  
9 ~~for a crime or infraction, within the meaning of Section 17556 of~~  
10 ~~the Government Code, or changes the definition of a crime within~~  
11 ~~the meaning of Section 6 of Article XIII B of the California~~  
12 ~~Constitution.~~

