

AMENDED IN ASSEMBLY MAY 2, 2005

AMENDED IN ASSEMBLY APRIL 14, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 421**

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**Introduced by Assembly Member Spitzer**  
**(Principal coauthors: Assembly Members Bermudez and Parra)**  
**(Coauthors: Assembly Members Benoit, Cogdill, Cohn, Daucher,**  
**DeVore, Houston, Huff, Matthews, Plescia, and Runner)**  
**(Coauthors: Senators Battin and Runner)**

February 15, 2005

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An act to add Section 530.2 to the Penal Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

AB 421, as amended, Spitzer. Crime: distribution of personal information.

Existing law provides that every person who willfully obtains personal identifying information, as defined, of another person and uses that information for an unlawful purpose shall be punished by a fine not to exceed \$1,000, imprisonment in a county jail for a period not to exceed one year, or by both that imprisonment and fine, or by a fine not to exceed \$10,000, imprisonment in the state prison, or by both that imprisonment and fine.

This bill would make every person who distributes, or knowingly aids and abets in the distribution of, personal information, as defined, about a person who is less than 18 years of age and who intends, knows, or reasonably should know that the information will be used to commit, or to attempt to commit, a crime against that person shall be punished by a fine not to exceed \$1,000, or imprisonment in a county

jail for a period not to exceed one year, or by both that fine and imprisonment, ~~or by imprisonment in the state prison.~~

This bill would also provide that a violation of these provisions, if the crime committed results in infliction of great bodily injury on a person who is less than 18 years of age, shall be punished by imprisonment in the state prison for 16 months, or 2 or 3 years, and that a violation, if the crime committed results in the death of a person who is less than 18 years of age, shall be punished by imprisonment in the state prison for 3, 5, or 7 years.

This bill would also provide that its provisions shall not apply to an Interactive Computer System (ICS) or an Internet Service Provider (ISP) if it acts expeditiously to remove the unlawful material upon receiving valid notice from law enforcement, as specified.

Because this bill would create a new crime, the 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.

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

1 SECTION 1. Section 530.2 is added to the Penal Code, to  
2 read:

3 530.2. (a) Every person who distributes, or knowingly aids  
4 and abets in the distribution of, personal information about a  
5 person who is less than 18 years of age and who intends, knows,  
6 or reasonably should know that the information will be used to  
7 commit, or to attempt to commit, a crime against that person  
8 shall be punished by a fine not to exceed one thousand dollars  
9 (\$1,000), or imprisonment in a county jail for a period not to  
10 exceed one year, or by both that fine and imprisonment, ~~or by~~  
11 ~~imprisonment in the state prison.~~

12 (b) For purposes of this section, “personal information” means  
13 information about a person who is less than 18 years of age,  
14 including, but not limited to, the name, address, telephone

1 number, e-mail address, age, physical description, picture, school  
2 address, parent’s or guardian’s hours of employment, and any  
3 other information relevant to the location of that person at a  
4 particular time of day.

5 (c) For purposes of this section, “distribution” includes, but is  
6 not limited to, posting personal information on an Internet Web  
7 site or sending personal information via e-mail.

8 (d) A violation of subdivision (a), if the crime committed  
9 results in infliction of great bodily injury on a person who is less  
10 than 18 years of age, shall be punished by imprisonment in the  
11 state prison for 16 months, or two or three years.

12 (e) A violation of subdivision (a), if the crime committed  
13 results in the death of a person who is less than 18 years of age  
14 shall be punished by imprisonment in the state prison for three,  
15 five, or seven years.

16 (f) Subdivision (a) shall not apply to an Interactive Computer  
17 Service (ICS) or an Internet Service Provider (ISP) if all of the  
18 following conditions are met:

19 (1) The ICS or ISP is transmitting, routing, or providing  
20 connections for material through a system or network controlled  
21 or operated by or for the service provider, or by reason of the  
22 intermediate and transient storage of that material in the course  
23 of such transmitting, routing, or providing connections and all of  
24 the following apply:

25 (A) The transmission of the material was initiated by, or at the  
26 direction of, a person other than the ICS or ISP.

27 (B) The transmission, routing, provisions of connections, or  
28 storage is carried out through an automatic technical process  
29 without selection of the material by the ICS or ISP.

30 (C) The ICS or ISP does not select the recipients of the  
31 material except as an automatic response to the request of  
32 another user.

33 (D) No copy of the material made by the ICS or ISP in the  
34 course of intermediate or transient storage is maintained on the  
35 system network in a manner ordinarily accessible to anyone other  
36 than anticipated recipients for a longer period than is reasonably  
37 necessary for the transmission, routing, or provision of  
38 connections.

39 (E) The material is transmitted through the system or network  
40 without modification of its content.

1 (2) The unlawful information is stored on a system or network  
2 controlled or operated by the ICS or ISP, so long as the ICS or  
3 ISP acts expeditiously to remove the unlawful material upon  
4 receiving a valid notice from law enforcement as provided in  
5 subdivision (g).

6 (3) The unlawful information is distributed via electronic mail  
7 that was not initiated by or at the direction of the ICS or ISP.

8 (g) “Notice” for purposes of subdivision (f) shall be valid only  
9 if it is presented in writing to the registered agent of the ICS or  
10 ISP and it contains, at a minimum, all of the following:

11 (1) Reference to this section.

12 (2) The name, physical business address, and contact  
13 information for the law enforcement officer presenting the notice.

14 (3) A specific reference to the material that is alleged to be  
15 unlawful under this section and its specific location (Uniform  
16 Resource Locator (URL) or Internet Protocol (IP) address).

17 (h) An ICS or ISP shall not be liable for its good faith  
18 compliance with this section.

19 (i) Nothing in this section imposes an obligation on any ICS or  
20 ISP to affirmatively seek facts indicating activity that is unlawful  
21 under this section, or to take action except as expressly set forth  
22 herein.

23 SEC. 2. No reimbursement is required by this act pursuant to  
24 Section 6 of Article XIII B of the California Constitution because  
25 the only costs that may be incurred by a local agency or school  
26 district will be incurred because this act creates a new crime or  
27 infraction, eliminates a crime or infraction, or changes the  
28 penalty for a crime or infraction, within the meaning of Section  
29 17556 of the Government Code, or changes the definition of a  
30 crime within the meaning of Section 6 of Article XIII B of the  
31 California Constitution.