

Introduced by Senator Poochigian

February 22, 2005

An act to amend Section 530.5 of, and to add Section 1203.051 to, the Penal Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

SB 839, as introduced, Poochigian. Identity theft.

Existing law provides that every person who willfully obtains personal identifying information about another person, as defined, and uses that information for any unlawful purpose is guilty of a crime punishable by imprisonment in a county jail not to exceed one year, or a fine not to exceed \$1,000, or both, or by imprisonment in the state prison, or a fine not to exceed \$10,000, or both. Existing law also provides that every person who, with the intent to defraud, acquires, transfers, or retains possession of the personal identifying information, as defined, of another person, is guilty of a crime punishable by imprisonment in the county jail not exceeding a year, a fine not exceeding \$1,000, or by both that imprisonment and fine.

This bill, the Identity Theft Traffickers Act of 2005, would instead provide that every person who, with intent to defraud, sells, transfers, or conveys, the personal information of another without that person's consent, or who, within any 12-month period acquires the personal identifying information of 4 or more other persons which he or she knows or has reason to know was taken in violation of provisions relating to identity theft, is guilty of grand theft, punishable by imprisonment in a county jail for a period not exceeding one year or in the state prison for 16 months, or 2 or 3 years.

Because this bill would create new crimes, this bill would impose a state-mandated local program.

This bill would provide that every person convicted of a felony violation of, or conspiracy to violate these provisions is punishable by an additional 2-year term of imprisonment in the state prison. This bill would also provide that every person who violates these provisions with respect the personal identifying information of a person who is less than 18 years of age, is an elder or dependent adult, or who is a person engaged in services in the uniformed services, is punishable by an additional one year term of imprisonment in the state prison.

Because this bill would increase the prosecutorial duties of local officials, this bill would create a state-mandated local program.

Existing law provides that probation shall not be granted nor shall the execution or imposition of sentence suspended for persons who have committed specified violations of law.

This bill would provide that probation shall not be granted nor shall the execution or imposition of sentence suspended for a person who has been convicted of a felony violation of provisions relating to personal identifying information if he or she has a prior felony conviction for a violation of those provisions.

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. This act shall be known and may be cited as the
2 Identity Theft Traffickers Act of 2005.
3 SEC. 2. Section 530.5 of the Penal Code is amended to read:
4 530.5. (a) Every person who willfully obtains personal
5 identifying information, as defined in subdivision (b), of another
6 person, and uses that information for any unlawful purpose,
7 including to obtain, or attempt to obtain, credit, goods, services,
8 or medical information in the name of the other person without
9 the consent of that person, is guilty of a public offense, and upon
10 conviction therefor, shall be punished either by imprisonment in
11 a county jail not to exceed one year, a fine not to exceed one

1 thousand dollars (\$1,000), or both that imprisonment and fine, or
2 by imprisonment in the state prison, a fine not to exceed ten
3 thousand dollars (\$10,000), or both that imprisonment and fine.

4 (b) “Personal identifying information,” as used in this section,
5 means the name, address, telephone number, health insurance
6 identification number, taxpayer identification number, school
7 identification number, state or federal driver’s license number, or
8 identification number, social security number, place of
9 employment, employee identification number, mother’s maiden
10 name, demand deposit account number, savings account number,
11 checking account number, PIN (personal identification number)
12 or password, alien registration number, government passport
13 number, date of birth, unique biometric data including
14 fingerprint, facial scan identifiers, voice print, retina or iris
15 image, or other unique physical representation, unique electronic
16 data including identification number, address, or routing code,
17 telecommunication identifying information or access device,
18 information contained in a birth or death certificate, or credit card
19 number of an individual person.

20 (c) In any case in which a person willfully obtains personal
21 identifying information of another person, uses that information
22 to commit a crime in addition to a violation of subdivision (a),
23 and is convicted of that crime, the court records shall reflect that
24 the person whose identity was falsely used to commit the crime
25 did not commit the crime.

26 (d) (1) Every person who, with the intent to defraud, acquires;
27 ~~transfers~~, or retains possession of the personal identifying
28 information, as defined in subdivision (b), of another person is
29 guilty of a public offense, and upon conviction therefor, shall be
30 punished by imprisonment in a county jail not to exceed one
31 year, or a fine not to exceed one thousand dollars (\$1,000), or by
32 both that imprisonment and fine. *The acquisition or retention of*
33 *possession of personal identifying information of another person*
34 *is a separate and distinct offense with respect to each person*
35 *victimized.*

36 (2) *If a person has previously been convicted of a violation of*
37 *this section and subsequently violates this subdivision, he or she*
38 *shall be punished by a fine not to exceed one thousand dollars*
39 *(\$1,000), imprisonment in a county jail for a period not to exceed*
40 *one year, or by both that fine and imprisonment, or by a fine not*

1 to exceed ten thousand dollars (\$10,000), imprisonment in the
2 state prison for 16 months, or two or three years, or by both that
3 fine and imprisonment.

4 (e) Every person who, with the intent to defraud, sells,
5 transfers, or conveys, the personal identifying information of
6 another, without that person's consent, is guilty of grand theft,
7 punishable by imprisonment in a county jail for a period not
8 exceeding one year or in the state prison for 16 months, or two
9 or three years.

10 (f) Notwithstanding subdivision (d), every person who, within
11 any 12-month period, acquires the personal identifying
12 information of four or more other persons, which he or she
13 knows or has reason to know was taken or retained in violation
14 of this section, is guilty of grand theft punishable by
15 imprisonment in a county jail for a period not exceeding one year
16 or in the state prison for 16 months, or two or three years.

17 (g) Every person convicted of a felony violation of, or
18 conspiracy to violate this section shall receive, in addition to any
19 other punishment authorized by law, including Section 667.5, a
20 full, separate, and consecutive term of imprisonment in the state
21 prison for two years for each prior conviction of a felony
22 violation of, or conspiracy to violate this section whether or not
23 the prior conviction resulted in a term of imprisonment.

24 (h) Every person who commits a violation of this section
25 against a person who is less than 18 years of age or who is an
26 elder or dependent adult, as defined in subdivisions (g) and (h) of
27 Section 368, and the victim's age was known or reasonably
28 should have been known to the person, shall receive, in addition
29 to any other punishment authorized by law, a full, separate, and
30 consecutive term of imprisonment in the state prison for one year
31 for each violation.

32 (i) Every person who commits a violation of this section
33 against a person who is engaged in services in the uniformed
34 services, as defined in subdivision (c) of Section 28000 of the
35 Education Code, shall receive, in addition to any other
36 punishment authorized by law, a full, separate, and consecutive
37 term of imprisonment in the state prison for one year for each
38 violation.

39 (j) The enhancements provided in this section shall be pleaded
40 and proven as provided by law.

1 *(k) Prior convictions from another jurisdiction for an offense*
2 *that, if committed in California, would be an offense under the*
3 *provisions of this section, qualify as prior convictions for the*
4 *purpose of applying the sentence enhancements provided by this*
5 *section.*

6 SEC. 3. Section 1203.051 is added to the Penal Code, to read:

7 1203.051. Notwithstanding Section 1203, probation shall not
8 be granted, nor shall the execution or imposition of sentence be
9 suspended for any person convicted of a felony violation of
10 Section 530.5 and who has one or more previous felony
11 convictions for a violation of that section

12 SEC. 4. No reimbursement is required by this act pursuant to
13 Section 6 of Article XIII B of the California Constitution because
14 the only costs that may be incurred by a local agency or school
15 district will be incurred because this act creates a new crime or
16 infraction, eliminates a crime or infraction, or changes the
17 penalty for a crime or infraction, within the meaning of Section
18 17556 of the Government Code, or changes the definition of a
19 crime within the meaning of Section 6 of Article XIII B of the
20 California Constitution.