

AMENDED IN SENATE JANUARY 5, 2006

SENATE BILL

No. 839

Introduced by Senator Poochigian

(Coauthors: Senators Aanestad, Ackerman, Ashburn, Battin, Cox, Denham, Dutton, Hollingsworth, Margett, Maldonado, Morrow, and Runner)

(Coauthors: Assembly Members Aghazarian, Benoit, Blakeslee, Bogh, Cogdill, Daucher, DeVore, Emmerson, Garcia, Harman, Haynes, Shirley Horton, Houston, La Malfa, Leslie, Maze, McCarthy, Mountjoy, Nakanishi, Niello, Plescia, Richman, Sharon Runner, Strickland, Spitzer, Tran, Villines, Walters, and Wyland)

February 22, 2005

An act to amend ~~Section~~ *Sections 186.22, 529, 530.5, 530.6, and 786* of, and to add ~~Section~~ *Sections 540, 541, 530.55, and 1203.051* to, the Penal Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

SB 839, as amended, 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.~~

(1) *This bill, the California Identity Theft and Personal Privacy Protection Act, would make various findings and declarations regarding the frequency and severity of incidents of theft of personal identifying information.*

(2) *Existing law, as amended by initiative, provides that, any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, or 2 or 3 years. Existing law defines a criminal street gang as an ongoing organization having as its primary activities commission of various criminal acts. Existing law also defines “pattern of criminal gang activity” to mean the commission of, attempted commission of, conspiracy to commit, or solicitation of, sustained juvenile petition for, or conviction of 2 or more of the certain offenses, as specified, including counterfeiting access cards and felony fraudulent use of an access card. Existing law also authorizes the Legislature to amend these provisions with a 2/3 vote of each house of the Legislature.*

This bill would add forgery of a counterfeit access card and misdemeanor fraudulent use of an access card to the list of offenses qualifying for a pattern of criminal gang activity and would expand the list of offenses used to define a “criminal street gang” and a “pattern of criminal gang activity” to include several offenses relating to theft of access cards and personal information.

By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

(3) *Existing law provides that any person who falsely personates another and does any act whereby the victim might become liable to any suit or prosecution is punishable by a fine not exceeding \$10,000, imprisonment in a county jail for a period not exceeding one year, by imprisonment in the state prison, or by both fine and imprisonment.*

This bill would expand these provisions to include any act whereby the victim may become liable to arrest or any criminal charge.

By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

(4) *Existing law defines personal identifying information and provides that every person who willfully obtains personal identifying information about another person, 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 one year, a fine not exceeding \$1,000, or by both that fine and imprisonment.

This bill, ~~the Identity Theft Traffickers Act of 2005~~, would specify that “person” includes natural persons living and deceased, and organizations, associations, business relationships and other legal entities, expand the definition of “personal identifying information” to include any identifying information that uniquely describes a person, and make other conforming changes. This bill would instead provide that every person who, with intent to defraud, acquires, retain, possession of, sells, transfers, or conveys, the ~~personal~~ 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, is punishable, based upon the number of persons from whom personal identifying information was taken, by fine, imprisonment in a county jail, imprisonment in the state prison, or by both fine and imprisonment, as specified.~~

Because this bill would expand the definition of existing crimes and 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 for each prior felony conviction of, or conviction of conspiracy to violate specified provisions. This bill would also provide that every person who ~~violates~~ commits a felony violation of 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.

(5) Existing law provides that it is unlawful for any person to engage in phishing, or to, by means of a Web page, electronic mail message, or otherwise through use of the Internet, to solicit, request, or take any action to induce another person to provide identifying information by representing itself to be a business without the authority or approval of the business.

This bill would provide that phishing is a crime punishable by a fine not exceeding \$1,000, imprisonment in a county jail for a period not exceeding one year, or by both that fine and imprisonment, or by a fine not exceeding \$10,000, imprisonment in the state prison, or by both that fine and imprisonment.

(6) Existing law establishes a program of financial and technical assistance for law enforcement and district attorneys' offices, designated the High Technology Theft Apprehension and Prosecution Program.

This bill would provide that in addition to any other fine, restitution fine, or other restitution, a forensic computer analysis fee of \$250 shall be paid by persons convicted of specified offenses and any person ordered by the court to do so if the court finds that the person committed a high-technology related offense primarily through the use of a computer. This bill would also provide that county treasurers shall maintain forensic computer analysis funds into which these fines shall be deposited to be used, less administrative costs, to fund costs incurred by computer forensic analysis, equipment, and education and training.

(7) Existing law provides that the jurisdiction for a criminal action for unauthorized use of personal identifying information includes the county where the theft of the information occurred and the county in which the information was used for an illegal purpose, and that, if multiple violations occurring in multiple jurisdictions all involving the same defendant or defendants and the same information belonging to one person are charged, then any one of those jurisdictions is proper for all of the offenses. Existing law also requires that a hearing be held when charges alleging multiple offenses of unauthorized use of personal identifying information occurring in multiple territorial jurisdictions are filed, as specified, to consider whether the matter should proceed as filed.

This bill would provide that proper jurisdiction for any crime properly joinable with a violation of identity theft provisions, theft of, or fraudulent use of access cards or account information, forgery of access cards, or trafficking in card making equipment would also include the county in which the victim resided at the time the offense was committed. This bill would remove language requiring that if multiple violations occurring in multiple jurisdictions all involving the same defendant or defendants are charged, that the same information belonging to one person must be at issue for any one of those jurisdictions to be proper for all of the offenses. This bill would also remove provisions requiring that a hearing be held to consider whether the matter should proceed.

This bill would also provide that the jurisdiction for a criminal action for a violation of identity theft provisions, theft of, or fraudulent use of access cards or account information, forgery of access cards, or trafficking in card making equipment in which the victim is a financial institution includes the county in which the main office of the financial institution was located when the crime occurred, as specified.

(8) Existing law provides that probation shall not be granted nor shall the execution or imposition of sentence *be* 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 *be* 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.

(9) 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.

(10) *This bill would provide that no reimbursement shall be made pursuant to these statutory provisions for costs mandated by the state pursuant to this act, but would recognize that local agencies may pursue any available remedies to seek reimbursement for these costs.*

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains

costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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~~. *California Identity Theft*
3 *and Personal Privacy Protection Act.*

4 SEC. 2. *The people of California find and declare each of the*
5 *following:*

6 (a) *Identity theft is the fastest growing crime in the United*
7 *States. California leads the nation in identity theft crimes, and*
8 *thousands of Californians are victimized by this practice each*
9 *month.*

10 (b) *Identity thieves steal personal information, such as a credit*
11 *card number, social security number, driver's license number, or*
12 *bank account information, and use that information to open*
13 *fraudulent credit accounts or run up charges on the accounts of*
14 *innocent victims.*

15 (c) *Identity theft can have a devastating long-term impact on*
16 *victims, who are often forced to work for years and spend*
17 *thousands of dollars trying to rebuild their credit and clear their*
18 *names. Existing laws do not adequately protect Californians*
19 *against identity theft crimes.*

20 (d) *Financial fraud using identity theft has attracted*
21 *increasingly organized criminal involvement in the theft and*
22 *trafficking of personal and financial identifying information. The*
23 *investigation and prosecution of these crimes is costly and*
24 *requires specialized training and equipment for law enforcement*
25 *agencies.*

26 (e) *In California, the link between illegal drug use and identity*
27 *theft is emerging as a significant safety problem. It is estimated*
28 *that up to 90 percent of methamphetamine addicts use identity*
29 *theft to support their habit.*

30 (f) *Even more ominously, some gangs are now mixing identity*
31 *theft with other more violent criminal activity. Gangs have*
32 *become increasingly sophisticated and are now using identity*

1 *theft to help finance their violent criminal activities and narcotics*
2 *operations.*

3 *(g) Therefore, the people of California declare that reform is*
4 *necessary to win the battle against identity theft. California's*
5 *criminal justice statutes must be strengthened to give law*
6 *enforcement the tools needed to address the epidemic.*
7 *Punishment for identity theft crimes must be increased, offenses*
8 *relating to the theft of access cards and personal information*
9 *must be added to the list of offenses qualifying for a pattern of*
10 *criminal gang activity, and offenders should be responsible for*
11 *the financial burden caused by their criminal acts.*

12 *SEC. 3. The purpose of this act is to strengthen criminal*
13 *penalties for identity theft, identity trafficking, electronic theft,*
14 *and the oft-related criminal offenses of organized street gangs,*
15 *and to shift the financial burden of these criminal acts from law*
16 *enforcement to convicted offenders.*

17 *SEC. 4. Section 186.22 of the Penal Code is amended to*
18 *read:*

19 186.22. (a) Any person who actively participates in any
20 criminal street gang with knowledge that its members engage in
21 or have engaged in a pattern of criminal gang activity, and who
22 willfully promotes, furthers, or assists in any felonious criminal
23 conduct by members of that gang, shall be punished by
24 imprisonment in a county jail for a period not to exceed one year,
25 or by imprisonment in the state prison for 16 months, or two or
26 three years.

27 (b) (1) Except as provided in paragraphs (4) and (5), any
28 person who is convicted of a felony committed for the benefit of,
29 at the direction of, or in association with any criminal street gang,
30 with the specific intent to promote, further, or assist in any
31 criminal conduct by gang members, shall, upon conviction of that
32 felony, in addition and consecutive to the punishment prescribed
33 for the felony or attempted felony of which he or she has been
34 convicted, be punished as follows:

35 (A) Except as provided in subparagraphs (B) and (C), the
36 person shall be punished by an additional term of two, three, or
37 four years at the court's discretion.

38 (B) If the felony is a serious felony, as defined in subdivision
39 (c) of Section 1192.7, the person shall be punished by an
40 additional term of five years.

1 (C) If the felony is a violent felony, as defined in subdivision
2 (c) of Section 667.5, the person shall be punished by an
3 additional term of 10 years.

4 (2) If the underlying felony described in paragraph (1) is
5 committed on the grounds of, or within 1,000 feet of, a public or
6 private elementary, vocational, junior high, or high school,
7 during hours in which the facility is open for classes or
8 school-related programs or when minors are using the facility
9 that fact shall be a circumstance in aggravation of the crime in
10 imposing a term under paragraph (1).

11 (3) The court shall order the imposition of the middle term of
12 the sentence enhancement, unless there are circumstances in
13 aggravation or mitigation. The court shall state the reasons for its
14 choice of sentencing enhancements on the record at the time of
15 the sentencing.

16 (4) Any person who is convicted of a felony enumerated in
17 this paragraph committed for the benefit of, at the direction of, or
18 in association with any criminal street gang, with the specific
19 intent to promote, further, or assist in any criminal conduct by
20 gang members, shall, upon conviction of that felony, be
21 sentenced to an indeterminate term of life imprisonment with a
22 minimum term of the indeterminate sentence calculated as the
23 greater of:

24 (A) The term determined by the court pursuant to Section
25 1170 for the underlying conviction, including any enhancement
26 applicable under Chapter 4.5 (commencing with Section 1170) of
27 Title 7 of Part 2, or any period prescribed by Section 3046, if the
28 felony is any of the offenses enumerated in subparagraph (B) or
29 (C) of this paragraph.

30 (B) Imprisonment in the state prison for 15 years, if the felony
31 is a home invasion robbery, in violation of subparagraph (A) of
32 paragraph (1) of subdivision (a) of Section 213; carjacking, as
33 defined in Section 215; a felony violation of Section 246; or a
34 violation of Section 12022.55.

35 (C) Imprisonment in the state prison for seven years, if the
36 felony is extortion, as defined in Section 519; or threats to
37 victims and witnesses, as defined in Section 136.1.

38 (5) Except as provided in paragraph (4), any person who
39 violates this subdivision in the commission of a felony
40 punishable by imprisonment in the state prison for life, shall not

1 be paroled until a minimum of 15 calendar years have been
2 served.

3 (c) If the court grants probation or suspends the execution of
4 sentence imposed upon the defendant for a violation of
5 subdivision (a), or in cases involving a true finding of the
6 enhancement enumerated in subdivision (b), the court shall
7 require that the defendant serve a minimum of 180 days in a
8 county jail as a condition thereof.

9 (d) Any person who is convicted of a public offense
10 punishable as a felony or a misdemeanor, which is committed for
11 the benefit of, at the direction of or in association with, any
12 criminal street gang with the specific intent to promote, further,
13 or assist in any criminal conduct by gang members, shall be
14 punished by imprisonment in the county jail not to exceed one
15 year, or by imprisonment in the state prison for one, two, or three
16 years, provided that any person sentenced to imprisonment in the
17 county jail shall be imprisoned for a period not to exceed one
18 year, but not less than 180 days, and shall not be eligible for
19 release upon completion of sentence, parole, or any other basis,
20 until he or she has served 180 days. If the court grants probation
21 or suspends the execution of sentence imposed upon the
22 defendant, it shall require as a condition thereof that the
23 defendant serve 180 days in a county jail.

24 (e) As used in this chapter, “pattern of criminal gang activity”
25 means the commission of, attempted commission of, conspiracy
26 to commit, or solicitation of, sustained juvenile petition for, or
27 conviction of two or more of the following offenses, provided at
28 least one of these offenses occurred after the effective date of this
29 chapter and the last of those offenses occurred within three years
30 after a prior offense, and the offenses were committed on
31 separate occasions, or by two or more persons:

32 (1) Assault with a deadly weapon or by means of force likely
33 to produce great bodily injury, as defined in Section 245.

34 (2) Robbery, as defined in Chapter 4 (commencing with
35 Section 211) of Title 8 of Part 1.

36 (3) Unlawful homicide or manslaughter, as defined in Chapter
37 1 (commencing with Section 187) of Title 8 of Part 1.

38 (4) The sale, possession for sale, transportation, manufacture,
39 offer for sale, or offer to manufacture controlled substances as

- 1 defined in Sections 11054, 11055, 11056, 11057, and 11058 of
2 the Health and Safety Code.
- 3 (5) Shooting at an inhabited dwelling or occupied motor
4 vehicle, as defined in Section 246.
- 5 (6) Discharging or permitting the discharge of a firearm from
6 a motor vehicle, as defined in subdivisions (a) and (b) of Section
7 12034.
- 8 (7) Arson, as defined in Chapter 1 (commencing with Section
9 450) of Title 13.
- 10 (8) The intimidation of witnesses ~~and~~ *or* victims, as defined in
11 Section 136.1.
- 12 (9) Grand theft, as defined in subdivision (a) or (c) of Section
13 487.
- 14 (10) Grand theft of any firearm, vehicle, trailer, or vessel.
- 15 (11) Burglary, as defined in Section 459.
- 16 (12) Rape, as defined in Section 261.
- 17 (13) Looting, as defined in Section 463.
- 18 (14) Money laundering, as defined in Section 186.10.
- 19 (15) Kidnapping, as defined in Section 207.
- 20 (16) Mayhem, as defined in Section 203.
- 21 (17) Aggravated mayhem, as defined in Section 205.
- 22 (18) Torture, as defined in Section 206.
- 23 (19) Felony extortion, as defined in Sections 518 and 520.
- 24 (20) Felony vandalism, as defined in paragraph (1) of
25 subdivision (b) of Section 594.
- 26 (21) Carjacking, as defined in Section 215.
- 27 (22) The sale, delivery, or transfer of a firearm, as defined in
28 Section 12072.
- 29 (23) Possession of a pistol, revolver, or other firearm capable
30 of being concealed upon the person in violation of paragraph (1)
31 of subdivision (a) of Section 12101.
- 32 (24) Threats to commit crimes resulting in death or great
33 bodily injury, as defined in Section 422.
- 34 (25) Theft and unlawful taking or driving of a vehicle, as
35 defined in Section 10851 of the Vehicle Code.
- 36 (26) Felony theft of an access card or account information, as
37 defined in Section 484e.
- 38 (27) Counterfeiting, *forgery*, designing, using, attempting to
39 use an access card, as defined in Section 484f *or* 484i.

1 (28) ~~Felony fraudulent~~ *Fraudulent* use of an access card or
2 account information, as defined in Section 484g.

3 (29) ~~Unlawful use of personal identifying information to~~
4 ~~obtain credit, goods, services, or medical information~~ *Identity*
5 *theft*, as defined in Section 530.5.

6 (30) ~~Wrongfully obtaining Department of Motor Vehicles~~
7 ~~documentation~~ *Department of Motor Vehicles document fraud*, as
8 defined in Section 529.7.

9 (f) As used in this chapter, “criminal street gang” means any
10 ongoing organization, association, or group of three or more
11 persons, whether formal or informal, having as one of its primary
12 activities the commission of one or more of the criminal acts
13 enumerated in paragraphs (1) to ~~(25)~~ (30), inclusive, of
14 subdivision (e), having a common name or common identifying
15 sign or symbol, and whose members individually or collectively
16 engage in or have engaged in a pattern of criminal gang activity.

17 (g) Notwithstanding any other law, the court may strike the
18 additional punishment for the enhancements provided in this
19 section or refuse to impose the minimum jail sentence for
20 misdemeanors in an unusual case where the interests of justice
21 would best be served, if the court specifies on the record and
22 enters into the minutes the circumstances indicating that the
23 interests of justice would best be served by that disposition.

24 (h) Notwithstanding any other provision of law, for each
25 person committed to the Division of Juvenile Facilities for a
26 conviction pursuant to subdivision (a) or (b) of this section, the
27 offense shall be deemed one for which the state shall pay the rate
28 of 100 percent of the per capita institutional cost of the Division
29 of Juvenile Facilities, pursuant to Section 912.5 of the Welfare
30 and Institutions Code.

31 (i) In order to secure a conviction, or sustain a juvenile
32 petition, pursuant to subdivision (a), it is not necessary for the
33 prosecution to prove that the person devotes all, or a substantial
34 part of his or her time or efforts to the criminal street gang, nor is
35 it necessary to prove that the person is a member of the criminal
36 street gang. Active participation in the criminal street gang is all
37 that is required.

38 (j) ~~A pattern of gang activity may be shown by the~~
39 ~~commission of one or more of the offenses enumerated in~~
40 ~~paragraphs (26) to (30), inclusive, of subdivision (e), and the~~

1 ~~commission of one or more of the offenses enumerated in~~
 2 ~~paragraphs (1) to (25), inclusive of subdivision (e). A pattern of~~
 3 ~~gang activity cannot be established solely by proof of~~
 4 ~~commission of offenses enumerated in paragraphs (26) to (30),~~
 5 ~~inclusive, of subdivision (e), alone.~~

6 *SEC. 5. Section 529 of the Penal Code is amended to read:*

7 529. Every person who falsely personates another in either
 8 his private or official capacity, and in such assumed character
 9 either:

10 1.

11 (a) Becomes bail or surety for any party in any proceeding
 12 whatever, before any court or officer authorized to take such bail
 13 or surety;

14 2.

15 (b) Verifies, publishes, acknowledges, or proves, in the name
 16 of another person, any written instrument, with intent that the
 17 same may be recorded, delivered, or used as true; or,

18 3.

19 (c) Does any other act whereby, if done by the person falsely
 20 personated, he might, in any event, become liable to any *arrest,*
 21 *criminal charge,* suit, or prosecution, or to pay any sum of
 22 money, or to incur any charge, forfeiture, or penalty, or whereby
 23 any benefit might accrue to the party personating, or to any other
 24 person;

25 Is punishable by a fine not exceeding ten thousand dollars
 26 (\$10,000), or by imprisonment in the state prison, or in a county
 27 jail not exceeding one year, or by both such fine and
 28 imprisonment.

29 *SEC. 6. Section 530.5 of the Penal Code is amended to read:*

30 530.5. (a) Every person who willfully obtains personal
 31 identifying information, as defined in subdivision (b) of *Section*
 32 *540,* of another person, and uses that information for any
 33 unlawful purpose, including to obtain, or attempt to obtain,
 34 credit, goods, services, *real property,* or medical information ~~in~~
 35 ~~the name of the other person~~ without the consent of that person,
 36 is guilty of a public offense, and upon conviction therefor, shall
 37 be punished either by imprisonment in a county jail not to exceed
 38 one year, a fine not to exceed one thousand dollars (\$1,000), or
 39 both that imprisonment and fine, or by imprisonment in the state

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

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

19 ~~(e)~~

20 ~~(b)~~ 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)~~

27 ~~(c)~~ Every person who, with the intent to defraud, acquires,
28 *sells*, transfers, *conveys*, or retains possession of the personal
29 identifying information, as defined in subdivision (b), of another
30 person is guilty of a public offense, and upon conviction therefor,
31 shall be punished ~~by as follows:~~

32 ~~(1) If the personal identifying information is from fewer than~~
33 ~~10 persons, by imprisonment in a county jail not to exceed one~~
34 ~~year, or by imprisonment in the state prison for 16 months, or~~
35 ~~two or three years, ~~or~~ and a fine not to exceed one thousand~~
36 ~~dollars (\$1,000) for each person, or by both that imprisonment~~
37 ~~and fine.~~

38 ~~(2) If the personal identifying information is from at least 10~~
39 ~~persons, but fewer than 50 persons, imprisonment in the state~~

1 *prison for 16 months, or two or three years, and a fine not to*
2 *exceed one thousand dollars (\$1,000) for each person.*

3 *(3) If the personal identifying information is from fewer than*
4 *500 persons, imprisonment in the state prison for two, three, or*
5 *five years, and a fine not to exceed one thousand dollars (\$1,000)*
6 *for each person.*

7 *(4) If the personal identifying information is from 500 or more*
8 *persons, imprisonment in the state prison for three, five, or seven*
9 *years, and a fine not to exceed one thousand dollars (\$1,000) for*
10 *each person.*

11 *(d) Every person convicted of a felony violation of, or*
12 *conspiracy to violate this section shall receive, in addition to any*
13 *other punishment authorized by law, including Section 667.5, a*
14 *full, separate, and consecutive term of imprisonment in the state*
15 *prison for two years for each prior conviction of a felony*
16 *violation of this section or Section 470, 470a, 472, 484e, 484f,*
17 *484g, 484i, 487, 496, 529, 530.55, or 532, including any*
18 *conviction for conspiracy to violate the listed sections. It is not*
19 *required that the prior conviction resulted in a term of*
20 *imprisonment.*

21 *(e) Every person who commits a felony violation of this section*
22 *shall receive, in addition to any other punishment authorized by*
23 *law, a full, separate, and consecutive term of imprisonment in the*
24 *state prison for one year for each violation, if either of the*
25 *following circumstances apply:*

26 *(1) The crime was committed against a person under 18 years*
27 *of age or an elder or dependent adult, as defined in subdivisions*
28 *(g) and (h) of Section 368, and the victim's age was know, or*
29 *should have been known to the person.*

30 *(2) The crime was committed against a person engaged in the*
31 *uniformed services, as defined in subdivision (c) of Section*
32 *28000 of the Education Code, and the victim's service was*
33 *known or should have been known to the person.*

34 *(f) The enhancements provided in this section shall be pleaded*
35 *and proven as provided by law.*

36 *(g) A prior conviction from another jurisdiction for an offense*
37 *that, if committed in California would be an offense under the*
38 *provisions of this section, shall qualify as a prior conviction for*
39 *the purposes of applying the sentence enhancements provided by*
40 *this section.*

1 (h) Notwithstanding any other provisions of law, nothing shall
2 prohibit a person who believes that he or she possesses personal
3 identifying information that has been unlawfully used by another,
4 as described in this section, from disclosing the personal
5 identifying information and related records when:

6 (1) The disclosure is necessary to report to law enforcement
7 the commission of a crime.

8 (2) The disclosure is required by law enforcement for the
9 purpose of investigating a violation of this chapter.

10 (3) The disclosure is requested by a victim.

11 (i) Nothing in this section shall require disclosure of personal
12 identifying information in accordance with subdivision (h) of this
13 section. No disclosure pursuant to this subdivision shall affect
14 any existing civil immunity provision as provided for in Section
15 47 of the Civil Code or any other provision of law.

16 ~~(e) Every person who, with the intent to defraud, acquires,
17 transfers, or retains possession of the personal identifying
18 information, as defined in subdivision (b), of another person who
19 is deployed to a location outside of the state is guilty of a public
20 offense, and upon conviction therefor, shall be punished by
21 imprisonment in a county jail not to exceed one year, or a fine
22 not to exceed one thousand five hundred dollars (\$1,500), or by
23 both that imprisonment and fine.~~

24 ~~(f) For purposes of this section, “deployed” means that the
25 person has been ordered to serve temporary military duty during
26 a period when a presidential executive order specifies that the
27 United States is engaged in combat or homeland defense and he
28 or she is either a member of the armed forces, or is a member of
29 the armed forces reserve or the National Guard, who has been
30 called to active duty or active service. It does not include
31 temporary duty for the sole purpose of training or processing or a
32 permanent change of station.~~

33 SEC. 7. Section 530.55 is added to the Penal Code, to read:

34 530.55. (a) Every person who engages in unlawful phishing,
35 as defined in Section 22948.2 of the Business and Professions
36 Code is guilty of a public offense, and upon conviction therefor,
37 shall be punished by a fine not to exceed one thousand dollars
38 (\$1,000), imprisonment in a county jail for a period not to exceed
39 one year, or by both that imprisonment and fine, or by a fine not
40 to exceed ten thousand dollars (\$10,000), imprisonment in the

1 *state prison for 16 months, or two or three years, or by both that*
2 *fine and imprisonment.*

3 *(b) Nothing in this section shall preclude prosecution under*
4 *both this section and Section 530.5, or any other provision of*
5 *law.*

6 *SEC. 8. Section 530.6 of the Penal Code is amended to read:*

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

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

1 factually innocent, the court shall issue an order certifying this
2 determination.

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
10 innocence pursuant to this section may at any time vacate that
11 determination if the petition, or any information submitted in
12 support of the petition, is found to contain any material
13 misrepresentation or fraud.

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

16 *SEC. 9. Section 540 is added to the Penal Code, to read:*

17 *540. (a) For purposes of this chapter, “person” means a*
18 *natural person, living or deceased, firm, association,*
19 *organization, partnership, business trust, company, corporation,*
20 *limited liability company, or public entity, or any other legal*
21 *entity.*

22 *(b) For purposes of this chapter, “personal identifying*
23 *information” means either of the following:*

24 *(1) Any name or number that may be used alone, or in*
25 *conjunction with any other information, to identify a specific*
26 *individual person, by name, address, telephone number, health*
27 *insurance number, taxpayer identification number, school*
28 *identification number, state or federal driver’s license, or*
29 *identification number, social security number, place of*
30 *employment, employee identification number, professional or*
31 *occupational number, mother’s maiden name, demand deposit*
32 *account number, savings account number, checking account*
33 *number, PIN (personal identification number) or password, alien*
34 *registration number, government passport number, date of birth,*
35 *unique biometric data including fingerprint, facial scan*
36 *identifiers, voice print, retina or iris image, or other unique*
37 *physical representation, unique electronic data including*
38 *information identification number assigned to the person,*
39 *address or routing code, telecommunication identifying*

1 *information or access device, information contained in a birth or*
2 *death certificate, or credit card number of an individual person.*

3 *(2) Any other identifying information that uniquely describes a*
4 *person.*

5 *SEC. 10. Section 541 is added to the Penal Code, to read:*

6 *541. (a) In addition to any other fine, restitution fine, or*
7 *other restitution, the following persons shall be required to pay a*
8 *forensic computer laboratory analysis fee in the amount of two*
9 *hundred and fifty dollars (\$250):*

10 *(1) Every person who is convicted of a violation of Section*
11 *484e, 484f, 484g, 484i, 487, 496, 529, 530.5, 530.55, or 532.*

12 *(2) Any person ordered by any court for any offense not*
13 *included specifically in this section if the court finds at the time*
14 *of conviction or sentencing that the person committed a*
15 *high-technology related offense primarily through the use of a*
16 *computer. The court shall state on the record the reasons for its*
17 *findings and the reasons for requiring the laboratory fee.*

18 *(b) The county treasurer shall maintain a forensic computer*
19 *analysis fund. The sum of two hundred fifty dollars (\$250) shall*
20 *be deposited into the fund for every conviction listed in*
21 *subdivision (a) of this section. The county may retain an amount*
22 *of this money equal to its administrative cost incurred pursuant*
23 *to this section not to exceed 5 percent. Moneys in the forensic*
24 *computer analysis fund shall be used exclusively to fund:*

25 *(1) Costs incurred by forensic laboratories providing*
26 *computer forensic analysis or other analysis of electronic or*
27 *computer evidence in connection with criminal investigations*
28 *conducted with both the incorporated and unincorporated*
29 *portions of the county.*

30 *(2) The purchase and maintenance of equipment for use by*
31 *these laboratories in performing the analysis.*

32 *(3) Continuing education, training, and development of*
33 *computer forensic analysis for analysis regularly employed by*
34 *these laboratories.*

35 *Moneys in the forensic computer analysis fund shall be in*
36 *addition to any allocations pursuant to existing law.*

37 *(c) As used in this section, “forensic laboratory” means a*
38 *laboratory operated by or under contract with a city, county, or*
39 *other public agency, including a forensic laboratory of the*
40 *Department of Justice.*

1 *SEC. 11. Section 786 of the Penal Code is amended to read:*

2 786. (a) When property taken in one jurisdictional territory
3 by burglary, carjacking, robbery, theft, or embezzlement has
4 been brought into another, or when property is received in one
5 jurisdictional territory with the knowledge that it has been stolen
6 or embezzled and the property was stolen or embezzled in
7 another jurisdictional territory, the jurisdiction of the offense is in
8 any competent court within either jurisdictional territory, or any
9 contiguous jurisdictional territory if the arrest is made within the
10 contiguous territory, the prosecution secures on the record the
11 defendant's knowing, voluntary, and intelligent waiver of the
12 right of vicinage, and the defendant is charged with one or more
13 property crimes in the arresting territory.

14 (b) (1) The jurisdiction of a criminal action for ~~unauthorized~~
15 ~~use of personal identifying information, as defined in any~~
16 ~~violation of Section 530.5 of the Penal Code, and for any crime~~
17 ~~properly joinable with a violation of Section 530.5,~~ shall also
18 include the county where the theft of the personal identifying
19 information occurred, *the county in which the victim resided at*
20 *the time the offense was committed,* or the county where the
21 information was used for an illegal purpose. If multiple ~~offenses~~
22 ~~of unauthorized use of personal identifying information,~~
23 ~~violations of Section 530.5~~ all involving the same defendant or
24 defendants ~~and the same personal identifying information~~
25 ~~belonging to the one person,~~ occur in multiple jurisdictions, any
26 one of those jurisdictions is a proper jurisdiction for all of the
27 offenses.

28 (2) ~~When charges alleging multiple offenses of unauthorized~~
29 ~~use of personal identifying information occurring in multiple~~
30 ~~territorial jurisdictions are filed in one county pursuant to this~~
31 ~~section, the court shall hold a hearing to consider whether the~~
32 ~~matter should proceed in the county of filing, or whether one or~~
33 ~~more counts should be severed. The district attorney filing the~~
34 ~~complaint shall present evidence to the court that the district~~
35 ~~attorney in each county where any of the charges could have~~
36 ~~been filed has agreed that the matter should proceed in the county~~
37 ~~of filing. In determining whether all counts in the complaint~~
38 ~~should be joined in one county for prosecution, the court shall~~
39 ~~consider the location and complexity of the likely evidence,~~
40 ~~where the majority of the offenses occurred, the rights of the~~

1 ~~defendant and the people, and the convenience of, or hardship to,~~
2 ~~the victim and witnesses.~~ *The jurisdiction for a criminal action*
3 *for any violation of Section 484e, 484f, 484g, or 484i, or for any*
4 *crime properly joinable with any violation of Section 484e, 484f,*
5 *484g, or 484i, that involves the unauthorized use of personal*
6 *identifying information shall also include the county in which the*
7 *theft occurred, the county in which the victim resided at the time*
8 *the offense was committed, and the county in which the*
9 *information was used for an illegal purpose. If multiple*
10 *violations of Section 484e, 484f, 484g, or 484i, all involving the*
11 *same defendant or defendants occur in multiple jurisdictions, any*
12 *one of those jurisdictions is a proper jurisdiction for all of the*
13 *offenses.*

14 *(3) The jurisdiction of a criminal action for any violation of*
15 *Section 484e, 484f, 484g, 484i, or 530.5, or for any crime*
16 *properly joinable with a violation of any of those sections, in*
17 *which the victim is a financial institution, as defined in*
18 *subdivision (a) of Section 1416, includes the county in which the*
19 *main office of the financial institution was located when the*
20 *crime occurred, provided that the financial institution maintains*
21 *a main office within California, and if no such office is*
22 *maintained in California, then the county in which the branch*
23 *office is located at which the financial transaction associated*
24 *with the identity theft occurred or was attempted.*

25 *(c) This section shall not be interpreted to alter victims' rights*
26 *under Section 530.6.*

27 *SEC. 12. Section 1203.051 is added to the Penal Code, to*
28 *read:*

29 *1203.051. (a) Except in unusual cases in which the interests*
30 *of justice would be best served if the person is granted probation,*
31 *probation shall not be granted to any person convicted of a*
32 *felony violation of Section 530.5 who has one or more previous*
33 *felony convictions for a violation of that section.*

34 *(b) If probation is granted, the court shall specify on the*
35 *record and shall enter in the minutes the circumstances*
36 *indicating that the interests of justice would be best served by the*
37 *disposition.*

38 *SEC. 13. It is the intent of the Legislature in enacting this*
39 *measure that if any provision of this act conflicts with another*

1 *section of law that provides for a greater penalty or longer*
2 *period of imprisonment, that the latter provision shall apply.*

3 *SEC. 14. The provisions of this act are severable. If any*
4 *provision of this act or its application is held invalid, that*
5 *invalidity shall not affect other provisions or applications that*
6 *can be given effect without the invalid provision or application.*

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

16 *No reimbursement is required by this act pursuant to Section 6*
17 *of Article XIII B of the California Constitution for other costs*
18 *that may be incurred by a local agency because the local agency*
19 *has the authority to levy service charges, fees, or assessments*
20 *sufficient to pay for the program or level of service mandated by*
21 *this act, within the meaning of Section 17556 of the Government*
22 *Code.*

23 *However, if the Commission on State Mandates determines that*
24 *this act contains other costs mandated by the state,*
25 *reimbursement to local agencies and school districts for those*
26 *costs shall be made pursuant to Part 7 (commencing with Section*
27 *17500) of Division 4 of Title 2 of the Government Code.*

28 ~~SEC. 2. Section 530.5 of the Penal Code is amended to read:~~

29 ~~530.5. (a) Every person who willfully obtains personal~~
30 ~~identifying information, as defined in subdivision (b), of another~~
31 ~~person, and uses that information for any unlawful purpose,~~
32 ~~including to obtain, or attempt to obtain, credit, goods, services,~~
33 ~~or medical information in the name of the other person without~~
34 ~~the consent of that person, is guilty of a public offense, and upon~~
35 ~~conviction therefor, shall be punished either by imprisonment in~~
36 ~~a county jail not to exceed one year, a fine not to exceed one~~
37 ~~thousand dollars (\$1,000), or both that imprisonment and fine, or~~
38 ~~by imprisonment in the state prison, a fine not to exceed ten~~
39 ~~thousand dollars (\$10,000), or both that imprisonment and fine.~~

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

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

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

33 (2) ~~If a person has previously been convicted of a violation of~~
34 ~~this section and subsequently violates this subdivision, he or she~~
35 ~~shall be punished by a fine not to exceed one thousand dollars~~
36 ~~(\$1,000), imprisonment in a county jail for a period not to exceed~~
37 ~~one year, or by both that fine and imprisonment, or by a fine not~~
38 ~~to exceed ten thousand dollars (\$10,000), imprisonment in the~~
39 ~~state prison for 16 months, or two or three years, or by both that~~
40 ~~fine and imprisonment.~~

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

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

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

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

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

36 ~~(j) The enhancements provided in this section shall be pleaded~~
37 ~~and proven as provided by law.~~

38 ~~(k) Prior convictions from another jurisdiction for an offense~~
39 ~~that, if committed in California, would be an offense under the~~
40 ~~provisions of this section, qualify as prior convictions for the~~

1 purpose of applying the sentence enhancements provided by this
2 section.

3 SEC. 3. ~~Section 1203.051 is added to the Penal Code, to read:~~
4 ~~1203.051. Notwithstanding Section 1203, probation shall not~~
5 ~~be granted, nor shall the execution or imposition of sentence be~~
6 ~~suspended for any person convicted of a felony violation of~~
7 ~~Section 530.5 and who has one or more previous felony~~
8 ~~convictions for a violation of that section~~

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