

Introduced by Senator CannellaFebruary 20, 2014

An act to amend Sections 312.3, 502.01, 647, 786, and 1524 of the Penal Code, relating to disorderly conduct.

LEGISLATIVE COUNSEL'S DIGEST

SB 1255, as introduced, Cannella. Disorderly conduct: unlawful distribution of image.

Existing law provides that any person who photographs or records by any means the image of the intimate body part or parts of another identifiable person, under circumstances where the parties agree or understand that the image shall remain private, and the person subsequently distributes the image taken, with the intent to cause serious emotional distress, and the depicted person suffers serious emotional distress, is guilty of disorderly conduct.

This bill would instead provide that a person who intentionally distributes by any means an image of the uncovered, or visible through less than fully opaque clothing, body part or parts of another identifiable person or an image of another identifiable person engaged in a sexual act, knowing that the depicted person does not consent to the distribution of the image, is guilty of disorderly conduct. The bill would also provide that it is not a violation of this provision to distribute the image under certain circumstances, including where the distribution is made in the course of reporting an unlawful activity. The bill makes other technical and clarifying changes.

Under existing law, matter that depicts a person under 18 years of age personally engaging in or personally simulating sexual conduct, as defined, and that is in the possession of any city, county, city and county, or state official or agency is subject to forfeiture pursuant to a petition

for forfeiture brought in the county in which the matter is located. Existing law provides for forfeiture by a defendant of illegal telecommunications equipment, or a computer, computer system, or computer network, and any software or data that was used in committing specified crimes, including depiction of a person under 18 years of age personally engaging in or personally simulating sexual conduct.

Existing law establishes the proper jurisdictions of a criminal action for unauthorized use, retention, or transfer of personal identifying information to include the county where the theft occurred, the county in which the victim resided at the time of the offense, or the county where the information was used for an illegal purpose. Existing law authorizes issuance of a search warrant on various grounds, including when the property or things to be seized consist of evidence that tends to show possession of matter depicting sexual conduct of a person under 18 years of age.

This bill would apply those provisions to the disorderly conduct described above.

Because this bill would broaden the scope of a crime, it 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 312.3 of the Penal Code is amended to
2 read:
3 312.3. (a) Matter that depicts (1) a person under ~~the age of 18~~
4 ~~years~~ 18 years of age personally engaging in or personally
5 simulating sexual conduct as defined in Section 311.4, or (2) an
6 image described in subparagraph (A) of paragraph (4) of
7 subdivision (j) of Section 647, and that is in the possession of any
8 city, county, city and county, or state official or agency is subject
9 to forfeiture pursuant to this section.
10 (b) An action to forfeit matter described in subdivision (a) may
11 be brought by the Attorney General, the district attorney, county

1 counsel, or the city attorney. Proceedings shall be initiated by a
2 petition of forfeiture filed in the superior court of the county in
3 which the matter is located.

4 (c) The prosecuting agency shall make service of process of a
5 notice regarding that petition upon every individual who may have
6 a property interest in the alleged proceeds. The notice shall state
7 that any interested party may file a verified claim with the superior
8 court stating the amount of their claimed interest and an affirmation
9 or denial of the prosecuting agency's allegation. If the notice cannot
10 be given by registered mail or personal delivery, the notice shall
11 be published for at least three successive weeks in a newspaper of
12 general circulation in the county where the property is located. All
13 notices shall set forth the time within which a claim of interest in
14 the property seized is required to be filed.

15 (d) (1) Any person claiming an interest in the property or
16 proceeds may, at any time within 30 days from the date of the first
17 publication of the notice of seizure, or within 30 days after receipt
18 of actual notice, file with the superior court of the county in which
19 the action is pending a verified claim stating his or her interest in
20 the property or proceeds. A verified copy of the claim shall be
21 given by the claimant to the Attorney General or district attorney,
22 county counsel, or city attorney, as appropriate.

23 (2) If, at the end of the time set forth in paragraph (1), an
24 interested person has not filed a claim, the court, upon motion,
25 shall declare that the person has defaulted upon his or her alleged
26 interest, and it shall be subject to forfeiture upon proof of
27 compliance with subdivision (c).

28 (e) The burden is on the petitioner to prove beyond a reasonable
29 doubt that matter is subject to forfeiture pursuant to this section.

30 (f) It is not necessary to seek or obtain a criminal conviction
31 prior to the entry of an order for the destruction of matter pursuant
32 to this section. Any matter described in subdivision (a) that is in
33 the possession of any city, county, city and county, or state official
34 or agency, including found property, or property obtained as the
35 result of a case in which no trial was had or that has been disposed
36 of by way of dismissal or otherwise than by way of conviction
37 may be ordered destroyed.

38 (g) A court order for destruction of matter described in
39 subdivision (a) may be carried out by a police or sheriff's

1 department or by the Department of Justice. The court order shall
2 specify the agency responsible for the destruction.

3 (h) As used in this section, “matter” means any book, magazine,
4 newspaper, or other printed or written material or any picture,
5 drawing, photograph, motion picture, or other pictorial
6 representation, or any ~~statue~~ *statue* or other figure, or any
7 recording, transcription or mechanical, chemical or electrical
8 reproduction, or any other articles, equipment, machines, or
9 materials. “Matter” also means any representation of information,
10 data, or image, including, but not limited to, any film, filmstrip,
11 photograph, negative, slide, photocopy, videotape, video laser disc,
12 computer hardware, computer software, computer floppy disc,
13 data storage media, CD-ROM, or computer-generated equipment
14 or any other computer-generated image that contains or
15 incorporates in any manner any film or filmstrip.

16 (i) This section does not apply to a depiction of a legally
17 emancipated minor or to lawful conduct between spouses if one
18 or both are under the age of 18.

19 (j) It is a defense in any forfeiture proceeding that the matter
20 seized was lawfully possessed in aid of legitimate scientific or
21 educational purposes.

22 SEC. 2. Section 502.01 of the Penal Code is amended to read:

23 502.01. (a) As used in this section:

24 (1) “Property subject to forfeiture” means any property of the
25 defendant that is illegal telecommunications equipment as defined
26 in subdivision (g) of Section 502.8, or a computer, computer
27 system, or computer network, and any software or data residing
28 thereon, if the telecommunications device, computer, computer
29 system, or computer network was used in committing a violation
30 of, or conspiracy to commit a violation of, subdivision (b) of
31 Section 272, Section 288, 288.2, 311.1, 311.2, 311.3, 311.4, 311.5,
32 311.10, 311.11, 422, 470, 470a, 472, 475, 476, 480, 483.5, 484g,
33 or subdivision (a), (b), or (d) of Section 484e, subdivision (a) of
34 Section 484f, subdivision (b) or (c) of Section 484i, subdivision
35 (c) of Section 502, or Section 502.7, 502.8, 529, 529a, or 530.5,
36 537e, 593d, 593e, ~~or~~ 646.9, *or subparagraph (A) of paragraph (4)*
37 *of subdivision (j) of Section 647, or was used as a repository for*
38 *the storage of software or data obtained in violation of those*
39 *provisions. Forfeiture shall not be available for any property used*
40 *solely in the commission of an infraction. If the defendant is a*

1 minor, it also includes property of the parent or guardian of the
2 defendant.

3 (2) “Sentencing court” means the court sentencing a person
4 found guilty of violating or conspiring to commit a violation of
5 subdivision (b) of Section 272, Section 288, 288.2, 311.1, 311.2,
6 311.3, 311.4, 311.5, 311.10, 311.11, 422, 470, 470a, 472, 475,
7 476, 480, 483.5, 484g, or subdivision (a), (b), or (d) of Section
8 484e, subdivision (d) of Section 484e, subdivision (a) of Section
9 484f, subdivision (b) or (c) of Section 484i, subdivision (c) of
10 Section 502, or Section 502.7, 502.8, 529, 529a, 530.5, 537e, 593d,
11 593e, or 646.9, or, in the case of a minor, found to be a person
12 described in Section 602 of the Welfare and Institutions Code
13 because of a violation of those provisions, the juvenile court.

14 (3) “Interest” means any property interest in the property subject
15 to forfeiture.

16 (4) “Security interest” means an interest that is a lien, mortgage,
17 security interest, or interest under a conditional sales contract.

18 (5) “Value” has the following meanings:

19 (A) When counterfeit items of computer software are
20 manufactured or possessed for sale, the “value” of those items
21 shall be equivalent to the retail price or fair market price of the
22 true items that are counterfeited.

23 (B) When counterfeited but unassembled components of
24 computer software packages are recovered, including, but not
25 limited to, counterfeited computer diskettes, instruction manuals,
26 or licensing envelopes, the “value” of those components of
27 computer software packages shall be equivalent to the retail price
28 or fair market price of the number of completed computer software
29 packages that could have been made from those components.

30 (b) The sentencing court shall, upon petition by the prosecuting
31 attorney, at any time following sentencing, or by agreement of all
32 parties, at the time of sentencing, conduct a hearing to determine
33 whether any property or property interest is subject to forfeiture
34 under this section. At the forfeiture hearing, the prosecuting
35 attorney shall have the burden of establishing, by a preponderance
36 of the evidence, that the property or property interests are subject
37 to forfeiture. The prosecuting attorney may retain seized property
38 that may be subject to forfeiture until the sentencing hearing.

39 (c) Prior to the commencement of a forfeiture proceeding, the
40 law enforcement agency seizing the property subject to forfeiture

1 shall make an investigation as to any person other than the
2 defendant who may have an interest in it. At least 30 days before
3 the hearing to determine whether the property should be forfeited,
4 the prosecuting agency shall send notice of the hearing to any
5 person who may have an interest in the property that arose before
6 the seizure.

7 A person claiming an interest in the property shall file a motion
8 for the redemption of that interest at least 10 days before the
9 hearing on forfeiture, and shall send a copy of the motion to the
10 prosecuting agency and to the probation department.

11 If a motion to redeem an interest has been filed, the sentencing
12 court shall hold a hearing to identify all persons who possess valid
13 interests in the property. No person shall hold a valid interest in
14 the property if, by a preponderance of the evidence, the prosecuting
15 agency shows that the person knew or should have known that the
16 property was being used in violation of, or conspiracy to commit
17 a violation of, subdivision (b) of Section 272, Section 288, 288.2,
18 311.1, 311.2, 311.3, 311.4, 311.5, 311.10, 311.11, 470, 470a, 472,
19 475, 476, 480, 483.5, 484g, or subdivision (a), (b), or (d) of Section
20 484e, subdivision (a) of Section 484f, subdivision (b) or (c) of
21 Section 484i, subdivision (c) of Section 502, or Section 502.7,
22 502.8, 529, 529a, 530.5, 537e, 593d, 593e, or 646.9, and that the
23 person did not take reasonable steps to prevent that use, or if the
24 interest is a security interest, the person knew or should have
25 known at the time that the security interest was created that the
26 property would be used for a violation.

27 (d) If the sentencing court finds that a person holds a valid
28 interest in the property, the following provisions shall apply:

29 (1) The court shall determine the value of the property.

30 (2) The court shall determine the value of each valid interest in
31 the property.

32 (3) If the value of the property is greater than the value of the
33 interest, the holder of the interest shall be entitled to ownership of
34 the property upon paying the court the difference between the
35 value of the property and the value of the valid interest.

36 If the holder of the interest declines to pay the amount determined
37 under paragraph (2), the court may order the property sold and
38 designate the prosecutor or any other agency to sell the property.
39 The designated agency shall be entitled to seize the property and
40 the holder of the interest shall forward any documentation

1 underlying the interest, including any ownership certificates for
2 that property, to the designated agency. The designated agency
3 shall sell the property and pay the owner of the interest the
4 proceeds, up to the value of that interest.

5 (4) If the value of the property is less than the value of the
6 interest, the designated agency shall sell the property and pay the
7 owner of the interest the proceeds, up to the value of that interest.

8 (e) If the defendant was a minor at the time of the offense, this
9 subdivision shall apply to property subject to forfeiture that is the
10 property of the parent or guardian of the minor.

11 (1) The prosecuting agency shall notify the parent or guardian
12 of the forfeiture hearing at least 30 days before the date set for the
13 hearing.

14 (2) The computer or telecommunications device shall not be
15 subject to forfeiture if the parent or guardian files a signed
16 statement with the court at least 10 days before the date set for the
17 hearing that the minor shall not have access to any computer or
18 telecommunications device owned by the parent or guardian for
19 two years after the date on which the minor is sentenced.

20 (3) If the minor is convicted of a violation of Section 288, 288.2,
21 311.1, 311.2, 311.3, 311.4, 311.5, 311.10, 311.11, 470, 470a, 472,
22 476, 480, or subdivision (b) of Section 484e, subdivision (d) of
23 Section 484e, subdivision (a) of Section 484f, subdivision (b) of
24 Section 484i, subdivision (c) of Section 502, or Section 502.7,
25 502.8, 529, 529a, or 530.5, within two years after the date on which
26 the minor is sentenced, and the violation involves a computer or
27 telecommunications device owned by the parent or guardian, the
28 original property subject to forfeiture, and the property involved
29 in the new offense, shall be subject to forfeiture notwithstanding
30 paragraph (2).

31 (4) Notwithstanding paragraph (1), (2), or (3), or any other
32 provision of this chapter, if a minor's parent or guardian makes
33 full restitution to the victim of a crime enumerated in this chapter
34 in an amount or manner determined by the court, the forfeiture
35 provisions of this chapter do not apply to the property of that parent
36 or guardian if the property was located in the family's primary
37 residence during the commission of the crime.

38 (f) Notwithstanding any other provision of this chapter, the court
39 may exercise its discretion to deny forfeiture where the court finds
40 that the convicted defendant, or minor adjudicated to come within

1 the jurisdiction of the juvenile court, is not likely to use the
2 property otherwise subject to forfeiture for future illegal acts.

3 (g) If the defendant is found to have the only valid interest in
4 the property subject to forfeiture, it shall be distributed as follows:

5 (1) First, to the victim, if the victim elects to take the property
6 as full or partial restitution for injury, victim expenditures, or
7 compensatory damages, as defined in paragraph (1) of subdivision
8 (e) of Section 502. If the victim elects to receive the property under
9 this paragraph, the value of the property shall be determined by
10 the court and that amount shall be credited against the restitution
11 owed by the defendant. The victim shall not be penalized for
12 electing not to accept the forfeited property in lieu of full or partial
13 restitution.

14 (2) Second, at the discretion of the court, to one or more of the
15 following agencies or entities:

16 (A) The prosecuting agency.

17 (B) The public entity of which the prosecuting agency is a part.

18 (C) The public entity whose officers or employees conducted
19 the investigation resulting in forfeiture.

20 (D) Other state and local public entities, including school
21 districts.

22 (E) Nonprofit charitable organizations.

23 (h) If the property is to be sold, the court may designate the
24 prosecuting agency or any other agency to sell the property at
25 auction. The proceeds of the sale shall be distributed by the court
26 as follows:

27 (1) To the bona fide or innocent purchaser or encumbrancer,
28 conditional sales vendor, or mortgagee of the property up to the
29 amount of his or her interest in the property, if the court orders a
30 distribution to that person.

31 (2) The balance, if any, to be retained by the court, subject to
32 the provisions for distribution under subdivision (g).

33 SEC. 3. Section 647 of the Penal Code is amended to read:

34 647. Except as provided in subdivision (l), every person who
35 commits any of the following acts is guilty of disorderly conduct,
36 a misdemeanor:

37 (a) Who solicits anyone to engage in or who engages in lewd
38 or dissolute conduct in any public place or in any place open to
39 the public or exposed to public view.

1 (b) Who solicits or who agrees to engage in or who engages in
2 any act of prostitution. A person agrees to engage in an act of
3 prostitution when, with specific intent to so engage, he or she
4 manifests an acceptance of an offer or solicitation to so engage,
5 regardless of whether the offer or solicitation was made by a person
6 who also possessed the specific intent to engage in prostitution.
7 No agreement to engage in an act of prostitution shall constitute
8 a violation of this subdivision unless some act, in addition to the
9 agreement, is done within this state in furtherance of the
10 commission of an act of prostitution by the person agreeing to
11 engage in that act. As used in this subdivision, “prostitution”
12 includes any lewd act between persons for money or other
13 consideration.

14 (c) Who accosts other persons in any public place or in any
15 place open to the public for the purpose of begging or soliciting
16 alms.

17 (d) Who loiters in or about any toilet open to the public for the
18 purpose of engaging in or soliciting any lewd or lascivious or any
19 unlawful act.

20 (e) Who lodges in any building, structure, vehicle, or place,
21 whether public or private, without the permission of the owner or
22 person entitled to the possession or in control of it.

23 (f) Who is found in any public place under the influence of
24 intoxicating liquor, any drug, controlled substance, toluene, or any
25 combination of any intoxicating liquor, drug, controlled substance,
26 or toluene, in a condition that he or she is unable to exercise care
27 for his or her own safety or the safety of others, or by reason of
28 his or her being under the influence of intoxicating liquor, any
29 drug, controlled substance, toluene, or any combination of any
30 intoxicating liquor, drug, or toluene, interferes with or obstructs
31 or prevents the free use of any street, sidewalk, or other public
32 way.

33 (g) When a person has violated subdivision (f), a peace officer,
34 if he or she is reasonably able to do so, shall place the person, or
35 cause him or her to be placed, in civil protective custody. The
36 person shall be taken to a facility, designated pursuant to Section
37 5170 of the Welfare and Institutions Code, for the 72-hour
38 treatment and evaluation of inebriates. A peace officer may place
39 a person in civil protective custody with that kind and degree of
40 force which would be lawful were he or she effecting an arrest for

1 a misdemeanor without a warrant. A person who has been placed
2 in civil protective custody shall not thereafter be subject to any
3 criminal prosecution or juvenile court proceeding based on the
4 facts giving rise to this placement. This subdivision shall not apply
5 to the following persons:

6 (1) Any person who is under the influence of any drug, or under
7 the combined influence of intoxicating liquor and any drug.

8 (2) Any person who a peace officer has probable cause to believe
9 has committed any felony, or who has committed any misdemeanor
10 in addition to subdivision (f).

11 (3) Any person who a peace officer in good faith believes will
12 attempt escape or will be unreasonably difficult for medical
13 personnel to control.

14 (h) Who loiters, prowls, or wanders upon the private property
15 of another, at any time, without visible or lawful business with the
16 owner or occupant. As used in this subdivision, “loiter” means to
17 delay or linger without a lawful purpose for being on the property
18 and for the purpose of committing a crime as opportunity may be
19 discovered.

20 (i) Who, while loitering, prowling, or wandering upon the private
21 property of another, at any time, peeks in the door or window of
22 any inhabited building or structure, without visible or lawful
23 business with the owner or occupant.

24 (j) (1) Any person who looks through a hole or opening, into,
25 or otherwise views, by means of any instrumentality, including,
26 but not limited to, a periscope, telescope, binoculars, camera,
27 motion picture camera, camcorder, or mobile phone, the interior
28 of a bedroom, bathroom, changing room, fitting room, dressing
29 room, or tanning booth, or the interior of any other area in which
30 the occupant has a reasonable expectation of privacy, with the
31 intent to invade the privacy of a person or persons inside. This
32 subdivision shall not apply to those areas of a private business
33 used to count currency or other negotiable instruments.

34 (2) Any person who uses a concealed camcorder, motion picture
35 camera, or photographic camera of any type, to secretly videotape,
36 film, photograph, or record by electronic means, another,
37 identifiable person under or through the clothing being worn by
38 that other person, for the purpose of viewing the body of, or the
39 undergarments worn by, that other person, without the consent or
40 knowledge of that other person, with the intent to arouse, appeal

1 to, or gratify the lust, passions, or sexual desires of that person and
2 invade the privacy of that other person, under circumstances in
3 which the other person has a reasonable expectation of privacy.

4 (3) (A) Any person who uses a concealed camcorder, motion
5 picture camera, or photographic camera of any type, to secretly
6 videotape, film, photograph, or record by electronic means, another,
7 identifiable person who may be in a state of full or partial undress,
8 for the purpose of viewing the body of, or the undergarments worn
9 by, that other person, without the consent or knowledge of that
10 other person, in the interior of a bedroom, bathroom, changing
11 room, fitting room, dressing room, or tanning booth, or the interior
12 of any other area in which that other person has a reasonable
13 expectation of privacy, with the intent to invade the privacy of that
14 other person.

15 (B) Neither of the following is a defense to the crime specified
16 in this paragraph:

17 (i) The defendant was a cohabitant, landlord, tenant, cotenant,
18 employer, employee, or business partner or associate of the victim,
19 or an agent of any of these.

20 (ii) The victim was not in a state of full or partial undress.

21 (4) (A) Any person who ~~photographs or records~~ *intentionally*
22 *distributes* by any means the image of the intimate body part or
23 ~~parts of another identifiable person, under circumstances where~~
24 ~~the parties agree or understand that the image shall remain private,~~
25 ~~and the person subsequently distributes the image taken, with the~~
26 ~~intent to cause serious emotional distress, and the depicted person~~
27 ~~suffers serious emotional distress.~~ *person whose intimate body*
28 *part or parts are either uncovered or visible through less than*
29 *fully opaque clothing or who is engaged in a sexual act, without*
30 *the consent of the depicted.*

31 (B) ~~As used in this paragraph, intimate~~ *For purposes of this*
32 *paragraph, the following definitions apply:*

33 (i) *“Intimate body part part”* means any portion of the genitals,
34 and in the case of a female, also includes any portion of the breasts
35 below the top of the areola, ~~that is either uncovered or visible~~
36 ~~through less than fully opaque clothing.~~ *areola.*

37 (ii) *“Sexual act”* means *sexual intercourse, including genital,*
38 *anal, or oral sex, or physical contact with another person’s*
39 *intimate body part or parts.*

1 (C) It shall not be a violation of this paragraph to distribute an
2 image described in subparagraph (A) if any of the following
3 applies:

4 (i) The distribution is made in the course of reporting an
5 unlawful activity.

6 (ii) The distribution is made in compliance with a subpoena or
7 other court order for use in a legal proceeding.

8 (iii) The image was captured in a public or commercial setting
9 and the person depicted in the image voluntarily exposed his or
10 her intimate body part or parts or voluntarily engaged in a sexual
11 act.

12 (iv) The distribution is made in the course of a lawful public
13 proceeding.

14 (E)

15 (5) Nothing in this subdivision precludes punishment under any
16 section of law providing for greater punishment.

17 (k) In any accusatory pleading charging a violation of
18 subdivision (b), if the defendant has been once previously convicted
19 of a violation of that subdivision, the previous conviction shall be
20 charged in the accusatory pleading. If the previous conviction is
21 found to be true by the jury, upon a jury trial, or by the court, upon
22 a court trial, or is admitted by the defendant, the defendant shall
23 be imprisoned in a county jail for a period of not less than 45 days
24 and shall not be eligible for release upon completion of sentence,
25 on probation, on parole, on work furlough or work release, or on
26 any other basis until he or she has served a period of not less than
27 45 days in a county jail. In all cases in which probation is granted,
28 the court shall require as a condition thereof that the person be
29 confined in a county jail for at least 45 days. In no event does the
30 court have the power to absolve a person who violates this
31 subdivision from the obligation of spending at least 45 days in
32 confinement in a county jail.

33 In any accusatory pleading charging a violation of subdivision
34 (b), if the defendant has been previously convicted two or more
35 times of a violation of that subdivision, each of these previous
36 convictions shall be charged in the accusatory pleading. If two or
37 more of these previous convictions are found to be true by the jury,
38 upon a jury trial, or by the court, upon a court trial, or are admitted
39 by the defendant, the defendant shall be imprisoned in a county
40 jail for a period of not less than 90 days and shall not be eligible

1 for release upon completion of sentence, on probation, on parole,
2 on work furlough or work release, or on any other basis until he
3 or she has served a period of not less than 90 days in a county jail.
4 In all cases in which probation is granted, the court shall require
5 as a condition thereof that the person be confined in a county jail
6 for at least 90 days. In no event does the court have the power to
7 absolve a person who violates this subdivision from the obligation
8 of spending at least 90 days in confinement in a county jail.

9 In addition to any punishment prescribed by this section, a court
10 may suspend, for not more than 30 days, the privilege of the person
11 to operate a motor vehicle pursuant to Section 13201.5 of the
12 Vehicle Code for any violation of subdivision (b) that was
13 committed within 1,000 feet of a private residence and with the
14 use of a vehicle. In lieu of the suspension, the court may order a
15 person's privilege to operate a motor vehicle restricted, for not
16 more than six months, to necessary travel to and from the person's
17 place of employment or education. If driving a motor vehicle is
18 necessary to perform the duties of the person's employment, the
19 court may also allow the person to drive in that person's scope of
20 employment.

21 (l) (1) A second or subsequent violation of subdivision (j) is
22 punishable by imprisonment in a county jail not exceeding one
23 year, or by a fine not exceeding two thousand dollars (\$2,000), or
24 by both that fine and imprisonment.

25 (2) If the victim of a violation of subdivision (j) was a minor at
26 the time of the offense, the violation is punishable by imprisonment
27 in a county jail not exceeding one year, or by a fine not exceeding
28 two thousand dollars (\$2,000), or by both that fine and
29 imprisonment.

30 SEC. 4. Section 786 of the Penal Code is amended to read:

31 786. (a) When property taken in one jurisdictional territory
32 by burglary, carjacking, robbery, theft, or embezzlement has been
33 brought into another, or when property is received in one
34 jurisdictional territory with the knowledge that it has been stolen
35 or embezzled and the property was stolen or embezzled in another
36 jurisdictional territory, the jurisdiction of the offense is in any
37 competent court within either jurisdictional territory, or any
38 contiguous jurisdictional territory if the arrest is made within the
39 contiguous territory, the prosecution secures on the record the
40 defendant's knowing, voluntary, and intelligent waiver of the right

1 of vicinage, and the defendant is charged with one or more property
2 crimes in the arresting territory.

3 (b) (1) The jurisdiction of a criminal action for unauthorized
4 use, retention, or transfer of personal identifying information, as
5 defined in subdivision (b) of Section 530.55, shall also include the
6 county where the theft of the personal identifying information
7 occurred, the county in which the victim resided at the time the
8 offense was committed, or the county where the information was
9 used for an illegal purpose. If multiple offenses of unauthorized
10 use of personal identifying information, either all involving the
11 same defendant or defendants and the same personal identifying
12 information belonging to the one person, or all involving the same
13 defendant or defendants and the same scheme or substantially
14 similar activity, occur in multiple jurisdictions, then any of those
15 jurisdictions is a proper jurisdiction for all of the offenses.
16 Jurisdiction also extends to all associated offenses connected
17 together in their commission to the underlying identity theft offense
18 or identity theft offenses.

19 (2) When charges alleging multiple offenses of unauthorized
20 use of personal identifying information occurring in multiple
21 territorial jurisdictions are filed in one county pursuant to this
22 section, the court shall hold a hearing to consider whether the
23 matter should proceed in the county of filing, or whether one or
24 more counts should be severed. The district attorney filing the
25 complaint shall present evidence to the court that the district
26 attorney in each county where any of the charges could have been
27 filed has agreed that the matter should proceed in the county of
28 filing. In determining whether all counts in the complaint should
29 be joined in one county for prosecution, the court shall consider
30 the location and complexity of the likely evidence, where the
31 majority of the offenses occurred, whether or not the offenses
32 involved substantially similar activity or the same scheme, the
33 rights of the defendant and the people, and the convenience of, or
34 hardship to, the victim and witnesses.

35 (3) When an action for unauthorized use, retention, or transfer
36 of personal identifying information is filed in the county in which
37 the victim resided at the time the offense was committed, and no
38 other basis for the jurisdiction applies, the court, upon its own
39 motion or the motion of the defendant, shall hold a hearing to
40 determine whether the county of the victim's residence is the proper

1 venue for trial of the case. In ruling on the matter, the court shall
2 consider the rights of the parties, the access of the parties to
3 evidence, the convenience to witnesses, and the interests of justice.

4 *(c) (1) The jurisdiction of a criminal action for unauthorized*
5 *distribution of an intimate image under paragraph (4) of*
6 *subdivision (j) of Section 647 shall also include the county in which*
7 *the offense occurred, the county in which the victim resided at the*
8 *time the offense was committed, or the county in which the intimate*
9 *image was used for an illegal purpose. If multiple offenses of*
10 *unauthorized distribution of an intimate image, either all involving*
11 *the same defendant or defendants and the same intimate image*
12 *belonging to the one person, or all involving the same defendant*
13 *or defendants and the same scheme or substantially similar activity,*
14 *occur in multiple jurisdictions, then any of those jurisdictions is*
15 *a proper jurisdiction for all of the offenses. Jurisdiction also*
16 *extends to all associated offenses connected together in their*
17 *commission to the underlying unauthorized distribution of an*
18 *intimate image.*

19 *(2) When charges alleging multiple offenses of unauthorized*
20 *distribution of an intimate image occurring in multiple territorial*
21 *jurisdictions are filed in one county pursuant to this section, the*
22 *court shall hold a hearing to consider whether the matter should*
23 *proceed in the county of filing, or whether one or more counts*
24 *should be severed. The district attorney filing the complaint shall*
25 *present evidence to the court that the district attorney in each*
26 *county where any of the charges could have been filed has agreed*
27 *that the matter should proceed in the county of filing. In*
28 *determining whether all counts in the complaint should be joined*
29 *in one county for prosecution, the court shall consider the location*
30 *and complexity of the likely evidence, where the majority of the*
31 *offenses occurred, whether the offenses involved substantially*
32 *similar activity or the same scheme, the rights of the defendant*
33 *and the people, and the convenience of, or hardship to, the victim*
34 *and witnesses.*

35 *(3) When an action for unauthorized distribution of an intimate*
36 *image is filed in the county in which the victim resided at the time*
37 *the offense was committed, and no other basis for the jurisdiction*
38 *applies, the court, upon its own motion or the motion of the*
39 *defendant, shall hold a hearing to determine whether the county*
40 *of the victim's residence is the proper venue for trial of the case.*

1 *In ruling on the matter, the court shall consider the rights of the*
2 *parties, the access of the parties to evidence, the convenience to*
3 *witnesses, and the interests of justice.*

4 (e)

5 (d) This section shall not be interpreted to alter victims' rights
6 under Section 530.6.

7 SEC. 5. Section 1524 of the Penal Code is amended to read:

8 1524. (a) A search warrant may be issued upon any of the
9 following grounds:

10 (1) When the property was stolen or embezzled.

11 (2) When the property or things were used as the means of
12 committing a felony.

13 (3) When the property or things are in the possession of any
14 person with the intent to use them as a means of committing a
15 public offense, or in the possession of another to whom he or she
16 may have delivered them for the purpose of concealing them or
17 preventing them from being discovered.

18 (4) When the property or things to be seized consist of any item
19 or constitute any evidence that tends to show a felony has been
20 committed, or tends to show that a particular person has committed
21 a felony.

22 (5) When the property or things to be seized consist of evidence
23 that tends to show that sexual exploitation of a child, in violation
24 of Section 311.3, or possession of matter depicting sexual conduct
25 of a person under 18 years of age, in violation of Section 311.11,
26 *or intentional distribution of an image, in violation of paragraph*
27 *(4) of subdivision (j) of Section 647, has occurred or is occurring.*

28 (6) When there is a warrant to arrest a person.

29 (7) When a provider of electronic communication service or
30 remote computing service has records or evidence, as specified in
31 Section 1524.3, showing that property was stolen or embezzled
32 constituting a misdemeanor, or that property or things are in the
33 possession of any person with the intent to use them as a means
34 of committing a misdemeanor public offense, or in the possession
35 of another to whom he or she may have delivered them for the
36 purpose of concealing them or preventing their discovery.

37 (8) When the property or things to be seized include an item or
38 any evidence that tends to show a violation of Section 3700.5 of
39 the Labor Code, or tends to show that a particular person has
40 violated Section 3700.5 of the Labor Code.

1 (9) When the property or things to be seized include a firearm
2 or any other deadly weapon at the scene of, or at the premises
3 occupied or under the control of the person arrested in connection
4 with, a domestic violence incident involving a threat to human life
5 or a physical assault as provided in Section 18250. This section
6 does not affect warrantless seizures otherwise authorized by Section
7 18250.

8 (10) When the property or things to be seized include a firearm
9 or any other deadly weapon that is owned by, or in the possession
10 of, or in the custody or control of, a person described in subdivision
11 (a) of Section 8102 of the Welfare and Institutions Code.

12 (11) When the property or things to be seized include a firearm
13 that is owned by, or in the possession of, or in the custody or
14 control of, a person who is subject to the prohibitions regarding
15 firearms pursuant to Section 6389 of the Family Code, if a
16 prohibited firearm is possessed, owned, in the custody of, or
17 controlled by a person against whom a protective order has been
18 issued pursuant to Section 6218 of the Family Code, the person
19 has been lawfully served with that order, and the person has failed
20 to relinquish the firearm as required by law.

21 (12) When the information to be received from the use of a
22 tracking device constitutes evidence that tends to show that either
23 a felony, a misdemeanor violation of the Fish and Game Code, or
24 a misdemeanor violation of the Public Resources Code has been
25 committed or is being committed, tends to show that a particular
26 person has committed a felony, a misdemeanor violation of the
27 Fish and Game Code, or a misdemeanor violation of the Public
28 Resources Code, or is committing a felony, a misdemeanor
29 violation of the Fish and Game Code, or a misdemeanor violation
30 of the Public Resources Code, or will assist in locating an
31 individual who has committed or is committing a felony, a
32 misdemeanor violation of the Fish and Game Code, or a
33 misdemeanor violation of the Public Resources Code. A tracking
34 device search warrant issued pursuant to this paragraph shall be
35 executed in a manner meeting the requirements specified in
36 subdivision (b) of Section 1534.

37 (13) When a sample of the blood of a person constitutes
38 evidence that tends to show a violation of Section 23140, 23152,
39 or 23153 of the Vehicle Code and the person from whom the
40 sample is being sought has refused an officer's request to submit

1 to, or has failed to complete, a blood test as required by Section
2 23612 of the Vehicle Code, and the sample will be drawn from
3 the person in a reasonable, medically approved manner. This
4 paragraph is not intended to abrogate a court's mandate to
5 determine the propriety of the issuance of a search warrant on a
6 case-by-case basis.

7 (b) The property, things, person, or persons described in
8 subdivision (a) may be taken on the warrant from any place, or
9 from any person in whose possession the property or things may
10 be.

11 (c) Notwithstanding subdivision (a) or (b), no search warrant
12 shall issue for any documentary evidence in the possession or
13 under the control of any person who is a lawyer as defined in
14 Section 950 of the Evidence Code, a physician as defined in Section
15 990 of the Evidence Code, a psychotherapist as defined in Section
16 1010 of the Evidence Code, or a member of the clergy as defined
17 in Section 1030 of the Evidence Code, and who is not reasonably
18 suspected of engaging or having engaged in criminal activity
19 related to the documentary evidence for which a warrant is
20 requested unless the following procedure has been complied with:

21 (1) At the time of the issuance of the warrant, the court shall
22 appoint a special master in accordance with subdivision (d) to
23 accompany the person who will serve the warrant. Upon service
24 of the warrant, the special master shall inform the party served of
25 the specific items being sought and that the party shall have the
26 opportunity to provide the items requested. If the party, in the
27 judgment of the special master, fails to provide the items requested,
28 the special master shall conduct a search for the items in the areas
29 indicated in the search warrant.

30 (2) (A) If the party who has been served states that an item or
31 items should not be disclosed, they shall be sealed by the special
32 master and taken to court for a hearing.

33 (B) At the hearing, the party searched shall be entitled to raise
34 any issues that may be raised pursuant to Section 1538.5 as well
35 as a claim that the item or items are privileged, as provided by
36 law. The hearing shall be held in the superior court. The court shall
37 provide sufficient time for the parties to obtain counsel and make
38 any motions or present any evidence. The hearing shall be held
39 within three days of the service of the warrant unless the court

1 makes a finding that the expedited hearing is impracticable. In that
2 case the matter shall be heard at the earliest possible time.

3 (C) If an item or items are taken to court for a hearing, any
4 limitations of time prescribed in Chapter 2 (commencing with
5 Section 799) of Title 3 of Part 2 shall be tolled from the time of
6 the seizure until the final conclusion of the hearing, including any
7 associated writ or appellate proceedings.

8 (3) The warrant shall, whenever practicable, be served during
9 normal business hours. In addition, the warrant shall be served
10 upon a party who appears to have possession or control of the
11 items sought. If, after reasonable efforts, the party serving the
12 warrant is unable to locate the person, the special master shall seal
13 and return to the court, for determination by the court, any item
14 that appears to be privileged as provided by law.

15 (d) (1) As used in this section, a “special master” is an attorney
16 who is a member in good standing of the California State Bar and
17 who has been selected from a list of qualified attorneys that is
18 maintained by the State Bar particularly for the purposes of
19 conducting the searches described in this section. These attorneys
20 shall serve without compensation. A special master shall be
21 considered a public employee, and the governmental entity that
22 caused the search warrant to be issued shall be considered the
23 employer of the special master and the applicable public entity,
24 for purposes of Division 3.6 (commencing with Section 810) of
25 Title 1 of the Government Code, relating to claims and actions
26 against public entities and public employees. In selecting the
27 special master, the court shall make every reasonable effort to
28 ensure that the person selected has no relationship with any of the
29 parties involved in the pending matter. Any information obtained
30 by the special master shall be confidential and may not be divulged
31 except in direct response to inquiry by the court.

32 (2) In any case in which the magistrate determines that, after
33 reasonable efforts have been made to obtain a special master, a
34 special master is not available and would not be available within
35 a reasonable period of time, the magistrate may direct the party
36 seeking the order to conduct the search in the manner described
37 in this section in lieu of the special master.

38 (e) Any search conducted pursuant to this section by a special
39 master may be conducted in a manner that permits the party serving
40 the warrant or his or her designee to accompany the special master

1 as he or she conducts his or her search. However, that party or his
2 or her designee may not participate in the search nor shall he or
3 she examine any of the items being searched by the special master
4 except upon agreement of the party upon whom the warrant has
5 been served.

6 (f) As used in this section, “documentary evidence” includes,
7 but is not limited to, writings, documents, blueprints, drawings,
8 photographs, computer printouts, microfilms, X-rays, files,
9 diagrams, ledgers, books, tapes, audio and video recordings, films,
10 and papers of any type or description.

11 (g) No warrant shall issue for any item or items described in
12 Section 1070 of the Evidence Code.

13 (h) Notwithstanding any other law, no claim of attorney work
14 product as described in Chapter 4 (commencing with Section
15 2018.010) of Title 4 of Part 4 of the Code of Civil Procedure shall
16 be sustained where there is probable cause to believe that the
17 lawyer is engaging or has engaged in criminal activity related to
18 the documentary evidence for which a warrant is requested unless
19 it is established at the hearing with respect to the documentary
20 evidence seized under the warrant that the services of the lawyer
21 were not sought or obtained to enable or aid anyone to commit or
22 plan to commit a crime or a fraud.

23 (i) Nothing in this section is intended to limit an attorney’s
24 ability to request an in camera hearing pursuant to the holding of
25 the Supreme Court of California in *People v. Superior Court (Laff)*
26 (2001) 25 Cal.4th 703.

27 (j) In addition to any other circumstance permitting a magistrate
28 to issue a warrant for a person or property in another county, when
29 the property or things to be seized consist of any item or constitute
30 any evidence that tends to show a violation of Section 530.5, the
31 magistrate may issue a warrant to search a person or property
32 located in another county if the person whose identifying
33 information was taken or used resides in the same county as the
34 issuing court.

35 (k) This section shall not be construed to create a cause of action
36 against any foreign or California corporation, its officers,
37 employees, agents, or other specified persons for providing location
38 information.

39 SEC. 6. No reimbursement is required by this act pursuant to
40 Section 6 of Article XIII B of the California Constitution because

1 the only costs that may be incurred by a local agency or school
2 district will be incurred because this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section 17556 of
5 the Government Code, or changes the definition of a crime within
6 the meaning of Section 6 of Article XIII B of the California
7 Constitution.

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