

AMENDED IN SENATE MAY 6, 2014

SENATE BILL

No. 1255

Introduced by Senator Cannella

(Coauthor: Senator Huff)

*(Coauthors: Assembly Members Garcia, Gonzalez, Jones, and
Wieckowski)*

February 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 amended, 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, *as described*, of the ~~uncovered, or visible through less than fully opaque clothing,~~ *intimate* body part or parts, *as defined*, 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, or an image of the person depicted engaging in specified sexual acts, under circumstances in which the persons agree or understand that the image remain private, the person distributing the image knows or should know~~

that distribution of the image will cause serious emotional distress, and the person depicted suffers that distress, 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 18 years of
4 age personally engaging in or personally simulating sexual conduct
5 as defined in Section 311.4, or (2) an image *used in the commission*
6 *of a crime* 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
12 counsel, or the city attorney. Proceedings shall be initiated by a
13 petition of forfeiture filed in the superior court of the county in
14 which the matter is located.

15 (c) The prosecuting agency shall make service of process of a
16 notice regarding that petition upon every individual who may have
17 a property interest in the alleged proceeds. The notice shall state
18 that any interested party may file a verified claim with the superior
19 court stating the amount of their claimed interest and an affirmation
20 or denial of the prosecuting agency's allegation. If the notice cannot
21 be given by registered mail or personal delivery, the notice shall
22 be published for at least three successive weeks in a newspaper of
23 general circulation in the county where the property is located. All
24 notices shall set forth the time within which a claim of interest in
25 the property seized is required to be filed.

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

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

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

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

11 (g) A court order for destruction of matter described in
12 subdivision (a) may be carried out by a police or sheriff's
13 department or by the Department of Justice. The court order shall
14 specify the agency responsible for the destruction.

15 (h) As used in this section, "matter" means any book, magazine,
16 newspaper, or other printed or written material or any picture,
17 drawing, photograph, motion picture, or other pictorial
18 representation, or any ~~statute~~ statue or other figure, or any
19 recording, transcription or mechanical, chemical or electrical
20 reproduction, or any other articles, equipment, machines, or
21 materials. "Matter" also means any representation of information,
22 data, or image, including, but not limited to, any film, filmstrip,
23 photograph, negative, slide, photocopy, videotape, video laser disc,
24 computer hardware, computer software, computer floppy disc,
25 data storage media, CD-ROM, or computer-generated equipment
26 or any other computer-generated image that contains or
27 incorporates in any manner any film or filmstrip.

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

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

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

35 502.01. (a) As used in this section:

36 (1) "Property subject to forfeiture" means any property of the
37 defendant that is illegal telecommunications equipment as defined
38 in subdivision (g) of Section 502.8, or a computer, computer
39 system, or computer network, and any software or data residing
40 thereon, if the telecommunications device, computer, computer

1 system, or computer network was used in committing a violation
2 of, or conspiracy to commit a violation of, subdivision (b) of
3 Section 272, Section 288, 288.2, 311.1, 311.2, 311.3, 311.4, 311.5,
4 311.10, 311.11, 422, 470, 470a, 472, 475, 476, 480, 483.5, 484g,
5 or subdivision (a), (b), or (d) of Section 484e, subdivision (a) of
6 Section 484f, subdivision (b) or (c) of Section 484i, subdivision
7 (c) of Section 502, or Section 502.7, 502.8, 529, 529a, or 530.5,
8 537e, 593d, 593e, 646.9, or subparagraph (A) of paragraph (4) of
9 subdivision (j) of Section 647, or was used as a repository for the
10 storage of software or data obtained in violation of those
11 provisions. Forfeiture shall not be available for any property used
12 solely in the commission of an infraction. If the defendant is a
13 minor, it also includes property of the parent or guardian of the
14 defendant.

15 (2) “Sentencing court” means the court sentencing a person
16 found guilty of violating or conspiring to commit a violation of
17 subdivision (b) of Section 272, Section 288, 288.2, 311.1, 311.2,
18 311.3, 311.4, 311.5, 311.10, 311.11, 422, 470, 470a, 472, 475,
19 476, 480, 483.5, 484g, or subdivision (a), (b), or (d) of Section
20 484e, subdivision (d) of Section 484e, subdivision (a) of Section
21 484f, subdivision (b) or (c) of Section 484i, subdivision (c) of
22 Section 502, or Section 502.7, 502.8, 529, 529a, 530.5, 537e, 593d,
23 593e, or 646.9, or, in the case of a minor, found to be a person
24 described in Section 602 of the Welfare and Institutions Code
25 because of a violation of those provisions, the juvenile court.

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

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

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

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

35 (B) When counterfeited but unassembled components of
36 computer software packages are recovered, including, but not
37 limited to, counterfeited computer diskettes, instruction manuals,
38 or licensing envelopes, the “value” of those components of
39 computer software packages shall be equivalent to the retail price

1 or fair market price of the number of completed computer software
2 packages that could have been made from those components.

3 (b) The sentencing court shall, upon petition by the prosecuting
4 attorney, at any time following sentencing, or by agreement of all
5 parties, at the time of sentencing, conduct a hearing to determine
6 whether any property or property interest is subject to forfeiture
7 under this section. At the forfeiture hearing, the prosecuting
8 attorney shall have the burden of establishing, by a preponderance
9 of the evidence, that the property or property interests are subject
10 to forfeiture. The prosecuting attorney may retain seized property
11 that may be subject to forfeiture until the sentencing hearing.

12 (c) Prior to the commencement of a forfeiture proceeding, the
13 law enforcement agency seizing the property subject to forfeiture
14 shall make an investigation as to any person other than the
15 defendant who may have an interest in it. At least 30 days before
16 the hearing to determine whether the property should be forfeited,
17 the prosecuting agency shall send notice of the hearing to any
18 person who may have an interest in the property that arose before
19 the seizure.

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

24 If a motion to redeem an interest has been filed, the sentencing
25 court shall hold a hearing to identify all persons who possess valid
26 interests in the property. No person shall hold a valid interest in
27 the property if, by a preponderance of the evidence, the prosecuting
28 agency shows that the person knew or should have known that the
29 property was being used in violation of, or conspiracy to commit
30 a violation of, subdivision (b) of Section 272, Section 288, 288.2,
31 311.1, 311.2, 311.3, 311.4, 311.5, 311.10, 311.11, 470, 470a, 472,
32 475, 476, 480, 483.5, 484g, or subdivision (a), (b), or (d) of Section
33 484e, subdivision (a) of Section 484f, subdivision (b) or (c) of
34 Section 484i, subdivision (c) of Section 502, or Section 502.7,
35 502.8, 529, 529a, 530.5, 537e, 593d, 593e, or 646.9, and that the
36 person did not take reasonable steps to prevent that use, or if the
37 interest is a security interest, the person knew or should have
38 known at the time that the security interest was created that the
39 property would be used for a violation.

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

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

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

6 (3) If the value of the property is greater than the value of the
7 interest, the holder of the interest shall be entitled to ownership of
8 the property upon paying the court the difference between the
9 value of the property and the value of the valid interest.

10 If the holder of the interest declines to pay the amount determined
11 under paragraph (2), the court may order the property sold and
12 designate the prosecutor or any other agency to sell the property.
13 The designated agency shall be entitled to seize the property and
14 the holder of the interest shall forward any documentation
15 underlying the interest, including any ownership certificates for
16 that property, to the designated agency. The designated agency
17 shall sell the property and pay the owner of the interest the
18 proceeds, up to the value of that interest.

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

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

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

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

34 (3) If the minor is convicted of a violation of Section 288, 288.2,
35 311.1, 311.2, 311.3, 311.4, 311.5, 311.10, 311.11, 470, 470a, 472,
36 476, 480, or subdivision (b) of Section 484e, subdivision (d) of
37 Section 484e, subdivision (a) of Section 484f, subdivision (b) of
38 Section 484i, subdivision (c) of Section 502, or Section 502.7,
39 502.8, 529, 529a, or 530.5, within two years after the date on which
40 the minor is sentenced, and the violation involves a computer or

1 telecommunications device owned by the parent or guardian, the
2 original property subject to forfeiture, and the property involved
3 in the new offense, shall be subject to forfeiture notwithstanding
4 paragraph (2).

5 (4) Notwithstanding paragraph (1), (2), or (3), or any other
6 provision of this chapter, if a minor's parent or guardian makes
7 full restitution to the victim of a crime enumerated in this chapter
8 in an amount or manner determined by the court, the forfeiture
9 provisions of this chapter do not apply to the property of that parent
10 or guardian if the property was located in the family's primary
11 residence during the commission of the crime.

12 (f) Notwithstanding any other provision of this chapter, the court
13 may exercise its discretion to deny forfeiture where the court finds
14 that the convicted defendant, or minor adjudicated to come within
15 the jurisdiction of the juvenile court, is not likely to use the
16 property otherwise subject to forfeiture for future illegal acts.

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

19 (1) First, to the victim, if the victim elects to take the property
20 as full or partial restitution for injury, victim expenditures, or
21 compensatory damages, as defined in paragraph (1) of subdivision
22 (e) of Section 502. If the victim elects to receive the property under
23 this paragraph, the value of the property shall be determined by
24 the court and that amount shall be credited against the restitution
25 owed by the defendant. The victim shall not be penalized for
26 electing not to accept the forfeited property in lieu of full or partial
27 restitution.

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

30 (A) The prosecuting agency.

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

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

34 (D) Other state and local public entities, including school
35 districts.

36 (E) Nonprofit charitable organizations.

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

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

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

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

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

11 (a) Who solicits anyone to engage in or who engages in lewd
12 or dissolute conduct in any public place or in any place open to
13 the public or exposed to public view.

14 (b) Who solicits or who agrees to engage in or who engages in
15 any act of prostitution. A person agrees to engage in an act of
16 prostitution when, with specific intent to so engage, he or she
17 manifests an acceptance of an offer or solicitation to so engage,
18 regardless of whether the offer or solicitation was made by a person
19 who also possessed the specific intent to engage in prostitution.
20 No agreement to engage in an act of prostitution shall constitute
21 a violation of this subdivision unless some act, in addition to the
22 agreement, is done within this state in furtherance of the
23 commission of an act of prostitution by the person agreeing to
24 engage in that act. As used in this subdivision, "prostitution"
25 includes any lewd act between persons for money or other
26 consideration.

27 (c) Who accosts other persons in any public place or in any
28 place open to the public for the purpose of begging or soliciting
29 alms.

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

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

36 (f) Who is found in any public place under the influence of
37 intoxicating liquor, any drug, controlled substance, toluene, or any
38 combination of any intoxicating liquor, drug, controlled substance,
39 or toluene, in a condition that he or she is unable to exercise care
40 for his or her own safety or the safety of others, or by reason of

1 his or her being under the influence of intoxicating liquor, any
2 drug, controlled substance, toluene, or any combination of any
3 intoxicating liquor, drug, or toluene, interferes with or obstructs
4 or prevents the free use of any street, sidewalk, or other public
5 way.

6 (g) When a person has violated subdivision (f), a peace officer,
7 if he or she is reasonably able to do so, shall place the person, or
8 cause him or her to be placed, in civil protective custody. The
9 person shall be taken to a facility, designated pursuant to Section
10 5170 of the Welfare and Institutions Code, for the 72-hour
11 treatment and evaluation of inebriates. A peace officer may place
12 a person in civil protective custody with that kind and degree of
13 force which would be lawful were he or she effecting an arrest for
14 a misdemeanor without a warrant. A person who has been placed
15 in civil protective custody shall not thereafter be subject to any
16 criminal prosecution or juvenile court proceeding based on the
17 facts giving rise to this placement. This subdivision shall not apply
18 to the following persons:

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

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

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

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

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

37 (j) (1) Any person who looks through a hole or opening, into,
38 or otherwise views, by means of any instrumentality, including,
39 but not limited to, a periscope, telescope, binoculars, camera,
40 motion picture camera, camcorder, or mobile phone, the interior

1 of a bedroom, bathroom, changing room, fitting room, dressing
2 room, or tanning booth, or the interior of any other area in which
3 the occupant has a reasonable expectation of privacy, with the
4 intent to invade the privacy of a person or persons inside. This
5 subdivision shall not apply to those areas of a private business
6 used to count currency or other negotiable instruments.

7 (2) Any person who uses a concealed camcorder, motion picture
8 camera, or photographic camera of any type, to secretly videotape,
9 film, photograph, or record by electronic means, another,
10 identifiable person under or through the clothing being worn by
11 that other person, for the purpose of viewing the body of, or the
12 undergarments worn by, that other person, without the consent or
13 knowledge of that other person, with the intent to arouse, appeal
14 to, or gratify the lust, passions, or sexual desires of that person and
15 invade the privacy of that other person, under circumstances in
16 which the other person has a reasonable expectation of privacy.

17 (3) (A) Any person who uses a concealed camcorder, motion
18 picture camera, or photographic camera of any type, to secretly
19 videotape, film, photograph, or record by electronic means, another,
20 identifiable person who may be in a state of full or partial undress,
21 for the purpose of viewing the body of, or the undergarments worn
22 by, that other person, without the consent or knowledge of that
23 other person, in the interior of a bedroom, bathroom, changing
24 room, fitting room, dressing room, or tanning booth, or the interior
25 of any other area in which that other person has a reasonable
26 expectation of privacy, with the intent to invade the privacy of that
27 other person.

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

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

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

34 (4) (A) Any person who intentionally distributes ~~by any means~~
35 the image of *the intimate body part or parts of* another identifiable
36 person ~~whose intimate body part or parts are either uncovered or~~
37 ~~visible through less than fully opaque clothing or who is engaged~~
38 ~~in a sexual act, without the consent of the depicted, or an image~~
39 ~~of the person depicted engaged in an act of sexual intercourse,~~
40 ~~sodomy, oral copulation, sexual penetration, or an image of~~

1 *masturbation by the person depicted or in which the person*
 2 *depicted participates, under circumstances in which the persons*
 3 *agree or understand that the image shall remain private, the person*
 4 *distributing the image knows or should know that distribution of*
 5 *the image will cause serious emotional distress, and the person*
 6 *depicted suffers that distress.*

7 ~~(B) For purposes of this paragraph, the following definitions~~
 8 ~~apply: A person intentionally distributes an image described in~~
 9 ~~subparagraph (A) when he or she personally distributes the image,~~
 10 ~~or arranges, specifically requests, or intentionally causes another~~
 11 ~~person to distribute that image.~~

12 ~~(i)~~
 13 ~~(C) “Intimate”~~ *As used in this paragraph, “intimate body part”*
 14 *means any portion of the genitals, the anus, and in the case of a*
 15 *female, also includes any portion of the breasts below the top of*
 16 *the areola, that is either uncovered or clearly visible through*
 17 *clothing.*

18 ~~(ii) “Sexual act” means sexual intercourse, including genital,~~
 19 ~~anal, or oral sex, or physical contact with another person’s intimate~~
 20 ~~body part or parts.~~

21 *(D) Nothing in this subdivision precludes punishment under*
 22 *any law providing for greater punishment.*

23 *(E) When a person is granted probation for a conviction under*
 24 *this paragraph, it shall be a condition of probation that the person*
 25 *destroy any physical image and permanently delete any digital*
 26 *image involved in the offense or that could be the basis of a*
 27 *prosecution under this paragraph, if distributed.*

28 *(F) A court may impose any reasonable condition of probation*
 29 *limiting or restricting the person’s use of any device for the*
 30 *creation, storage, or distribution of digital images.*

31 ~~(E)~~

32 *(G) It shall not be a violation of this paragraph to distribute an*
 33 *image described in subparagraph (A) if any of the following*
 34 *applies:*

35 *(i) The distribution is made in the course of reporting an*
 36 *unlawful activity.*

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

39 ~~(iii) The image was captured in a public or commercial setting~~
 40 ~~and the person depicted in the image voluntarily exposed his or~~

1 ~~her intimate body part or parts or voluntarily engaged in a sexual~~
2 ~~act.~~

3 (iv)

4 (iii) The distribution is made in the course of a lawful public
5 proceeding.

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

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

24 In any accusatory pleading charging a violation of subdivision
25 (b), if the defendant has been previously convicted two or more
26 times of a violation of that subdivision, each of these previous
27 convictions shall be charged in the accusatory pleading. If two or
28 more of these previous convictions are found to be true by the jury,
29 upon a jury trial, or by the court, upon a court trial, or are admitted
30 by the defendant, the defendant shall be imprisoned in a county
31 jail for a period of not less than 90 days and shall not be eligible
32 for release upon completion of sentence, on probation, on parole,
33 on work furlough or work release, or on any other basis until he
34 or she has served a period of not less than 90 days in a county jail.
35 In all cases in which probation is granted, the court shall require
36 as a condition thereof that the person be confined in a county jail
37 for at least 90 days. In no event does the court have the power to
38 absolve a person who violates this subdivision from the obligation
39 of spending at least 90 days in confinement in a county jail.

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

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

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

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

23 786. (a) When property taken in one jurisdictional territory
24 by burglary, carjacking, robbery, theft, or embezzlement has been
25 brought into another, or when property is received in one
26 jurisdictional territory with the knowledge that it has been stolen
27 or embezzled and the property was stolen or embezzled in another
28 jurisdictional territory, the jurisdiction of the offense is in any
29 competent court within either jurisdictional territory, or any
30 contiguous jurisdictional territory if the arrest is made within the
31 contiguous territory, the prosecution secures on the record the
32 defendant's knowing, voluntary, and intelligent waiver of the right
33 of vicinage, and the defendant is charged with one or more property
34 crimes in the arresting territory.

35 (b) (1) The jurisdiction of a criminal action for unauthorized
36 use, retention, or transfer of personal identifying information, as
37 defined in subdivision (b) of Section 530.55, shall also include the
38 county where the theft of the personal identifying information
39 occurred, the county in which the victim resided at the time the
40 offense was committed, or the county where the information was

1 used for an illegal purpose. If multiple offenses of unauthorized
2 use of personal identifying information, either all involving the
3 same defendant or defendants and the same personal identifying
4 information belonging to the one person, or all involving the same
5 defendant or defendants and the same scheme or substantially
6 similar activity, occur in multiple jurisdictions, then any of those
7 jurisdictions is a proper jurisdiction for all of the offenses.
8 Jurisdiction also extends to all associated offenses connected
9 together in their commission to the underlying identity theft offense
10 or identity theft offenses.

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

27 (3) When an action for unauthorized use, retention, or transfer
28 of personal identifying information is filed in the county in which
29 the victim resided at the time the offense was committed, and no
30 other basis for the jurisdiction applies, the court, upon its own
31 motion or the motion of the defendant, shall hold a hearing to
32 determine whether the county of the victim's residence is the proper
33 venue for trial of the case. In ruling on the matter, the court shall
34 consider the rights of the parties, the access of the parties to
35 evidence, the convenience to witnesses, and the interests of justice.

36 (c) (1) The jurisdiction of a criminal action for unauthorized
37 distribution of an intimate image under paragraph (4) of subdivision
38 (j) of Section 647 shall also include the county in which the offense
39 occurred, the county in which the victim resided at the time the
40 offense was committed, or the county in which the intimate image

1 was used for an illegal purpose. If multiple offenses of
2 unauthorized distribution of an intimate image, either all involving
3 the same defendant or defendants and the same intimate image
4 belonging to the one person, or all involving the same defendant
5 or defendants and the same scheme or substantially similar activity,
6 occur in multiple jurisdictions, then any of those jurisdictions is a
7 proper jurisdiction for all of the offenses. Jurisdiction also extends
8 to all associated offenses connected together in their commission
9 to the underlying unauthorized distribution of an intimate image.

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

26 (3) When an action for unauthorized distribution of an intimate
27 image is filed in the county in which the victim resided at the time
28 the offense was committed, and no other basis for the jurisdiction
29 applies, the court, upon its own motion or the motion of the
30 defendant, shall hold a hearing to determine whether the county
31 of the victim's residence is the proper venue for trial of the case.
32 In ruling on the matter, the court shall consider the rights of the
33 parties, the access of the parties to evidence, the convenience to
34 witnesses, and the interests of justice.

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

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

38 1524. (a) A search warrant may be issued upon any of the
39 following grounds:

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

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

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

8 (4) When the property or things to be seized consist of any item
9 or constitute any evidence that tends to show a felony has been
10 committed, or tends to show that a particular person has committed
11 a felony.

12 (5) When the property or things to be seized consist of evidence
13 that tends to show that sexual exploitation of a child, in violation
14 of Section 311.3, or possession of matter depicting sexual conduct
15 of a person under 18 years of age, in violation of Section 311.11,
16 or intentional distribution of an image, in violation of paragraph
17 (4) of subdivision (j) of Section 647, has occurred or is occurring.

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

19 (7) When a provider of electronic communication service or
20 remote computing service has records or evidence, as specified in
21 Section 1524.3, showing that property was stolen or embezzled
22 constituting a misdemeanor, or that property or things are in the
23 possession of any person with the intent to use them as a means
24 of committing a misdemeanor public offense, or in the possession
25 of another to whom he or she may have delivered them for the
26 purpose of concealing them or preventing their discovery.

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

31 (9) When the property or things to be seized include a firearm
32 or any other deadly weapon at the scene of, or at the premises
33 occupied or under the control of the person arrested in connection
34 with, a domestic violence incident involving a threat to human life
35 or a physical assault as provided in Section 18250. This section
36 does not affect warrantless seizures otherwise authorized by Section
37 18250.

38 (10) When the property or things to be seized include a firearm
39 or any other deadly weapon that is owned by, or in the possession

1 of, or in the custody or control of, a person described in subdivision
2 (a) of Section 8102 of the Welfare and Institutions Code.

3 (11) When the property or things to be seized include a firearm
4 that is owned by, or in the possession of, or in the custody or
5 control of, a person who is subject to the prohibitions regarding
6 firearms pursuant to Section 6389 of the Family Code, if a
7 prohibited firearm is possessed, owned, in the custody of, or
8 controlled by a person against whom a protective order has been
9 issued pursuant to Section 6218 of the Family Code, the person
10 has been lawfully served with that order, and the person has failed
11 to relinquish the firearm as required by law.

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

28 (13) When a sample of the blood of a person constitutes
29 evidence that tends to show a violation of Section 23140, 23152,
30 or 23153 of the Vehicle Code and the person from whom the
31 sample is being sought has refused an officer's request to submit
32 to, or has failed to complete, a blood test as required by Section
33 23612 of the Vehicle Code, and the sample will be drawn from
34 the person in a reasonable, medically approved manner. This
35 paragraph is not intended to abrogate a court's mandate to
36 determine the propriety of the issuance of a search warrant on a
37 case-by-case basis.

38 (b) The property, things, person, or persons described in
39 subdivision (a) may be taken on the warrant from any place, or

1 from any person in whose possession the property or things may
2 be.

3 (c) Notwithstanding subdivision (a) or (b), no search warrant
4 shall issue for any documentary evidence in the possession or
5 under the control of any person who is a lawyer as defined in
6 Section 950 of the Evidence Code, a physician as defined in Section
7 990 of the Evidence Code, a psychotherapist as defined in Section
8 1010 of the Evidence Code, or a member of the clergy as defined
9 in Section 1030 of the Evidence Code, and who is not reasonably
10 suspected of engaging or having engaged in criminal activity
11 related to the documentary evidence for which a warrant is
12 requested unless the following procedure has been complied with:

13 (1) At the time of the issuance of the warrant, the court shall
14 appoint a special master in accordance with subdivision (d) to
15 accompany the person who will serve the warrant. Upon service
16 of the warrant, the special master shall inform the party served of
17 the specific items being sought and that the party shall have the
18 opportunity to provide the items requested. If the party, in the
19 judgment of the special master, fails to provide the items requested,
20 the special master shall conduct a search for the items in the areas
21 indicated in the search warrant.

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

25 (B) At the hearing, the party searched shall be entitled to raise
26 any issues that may be raised pursuant to Section 1538.5 as well
27 as a claim that the item or items are privileged, as provided by
28 law. The hearing shall be held in the superior court. The court shall
29 provide sufficient time for the parties to obtain counsel and make
30 any motions or present any evidence. The hearing shall be held
31 within three days of the service of the warrant unless the court
32 makes a finding that the expedited hearing is impracticable. In that
33 case the matter shall be heard at the earliest possible time.

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

39 (3) The warrant shall, whenever practicable, be served during
40 normal business hours. In addition, the warrant shall be served

1 upon a party who appears to have possession or control of the
2 items sought. If, after reasonable efforts, the party serving the
3 warrant is unable to locate the person, the special master shall seal
4 and return to the court, for determination by the court, any item
5 that appears to be privileged as provided by law.

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

23 (2) In any case in which the magistrate determines that, after
24 reasonable efforts have been made to obtain a special master, a
25 special master is not available and would not be available within
26 a reasonable period of time, the magistrate may direct the party
27 seeking the order to conduct the search in the manner described
28 in this section in lieu of the special master.

29 (e) Any search conducted pursuant to this section by a special
30 master may be conducted in a manner that permits the party serving
31 the warrant or his or her designee to accompany the special master
32 as he or she conducts his or her search. However, that party or his
33 or her designee may not participate in the search nor shall he or
34 she examine any of the items being searched by the special master
35 except upon agreement of the party upon whom the warrant has
36 been served.

37 (f) As used in this section, “documentary evidence” includes,
38 but is not limited to, writings, documents, blueprints, drawings,
39 photographs, computer printouts, microfilms, X-rays, files,

1 diagrams, ledgers, books, tapes, audio and video recordings, films,
2 and papers of any type or description.

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

5 (h) Notwithstanding any other law, no claim of attorney work
6 product as described in Chapter 4 (commencing with Section
7 2018.010) of Title 4 of Part 4 of the Code of Civil Procedure shall
8 be sustained where there is probable cause to believe that the
9 lawyer is engaging or has engaged in criminal activity related to
10 the documentary evidence for which a warrant is requested unless
11 it is established at the hearing with respect to the documentary
12 evidence seized under the warrant that the services of the lawyer
13 were not sought or obtained to enable or aid anyone to commit or
14 plan to commit a crime or a fraud.

15 (i) Nothing in this section is intended to limit an attorney's
16 ability to request an in camera hearing pursuant to the holding of
17 the Supreme Court of California in *People v. Superior Court (Laff)*
18 (2001) 25 Cal.4th 703.

19 (j) In addition to any other circumstance permitting a magistrate
20 to issue a warrant for a person or property in another county, when
21 the property or things to be seized consist of any item or constitute
22 any evidence that tends to show a violation of Section 530.5, the
23 magistrate may issue a warrant to search a person or property
24 located in another county if the person whose identifying
25 information was taken or used resides in the same county as the
26 issuing court.

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

31 SEC. 6. No reimbursement is required by this act pursuant to
32 Section 6 of Article XIII B of the California Constitution because
33 the only costs that may be incurred by a local agency or school
34 district will be incurred because this act creates a new crime or
35 infraction, eliminates a crime or infraction, or changes the penalty
36 for a crime or infraction, within the meaning of Section 17556 of
37 the Government Code, or changes the definition of a crime within
38 the meaning of Section 6 of Article XIII B of the California
39 Constitution.

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- 2 CORRECTIONS:
- 3 Text—Page 12.
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