

AMENDED IN ASSEMBLY JUNE 26, 2014

AMENDED IN SENATE MAY 6, 2014

**SENATE BILL**

**No. 1255**

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**Introduced by Senator Cannella  
(Coauthor: Senator Huff)**

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

February 20, 2014

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An act to amend ~~Sections 312.3, 502.01, 647, 786, and 1524~~ *Section 647* 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 an image, as described, of the intimate body part or parts, as defined, of another identifiable person, 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:

1     ~~312.3.— (a) Matter that depicts (1) a person under 18 years of~~  
2 ~~age personally engaging in or personally simulating sexual conduct~~  
3 ~~as defined in Section 311.4, or (2) an image used in the commission~~  
4 ~~of a crime described in subparagraph (A) of paragraph (4) of~~  
5 ~~subdivision (j) of Section 647, and that is in the possession of any~~  
6 ~~city, county, city and county, or state official or agency is subject~~  
7 ~~to forfeiture pursuant to this section.~~

8     ~~(b) An action to forfeit matter described in subdivision (a) may~~  
9 ~~be brought by the Attorney General, the district attorney, county~~  
10 ~~counsel, or the city attorney. Proceedings shall be initiated by a~~  
11 ~~petition of forfeiture filed in the superior court of the county in~~  
12 ~~which the matter is located.~~

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

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

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

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

39     ~~(f) It is not necessary to seek or obtain a criminal conviction~~  
40 ~~prior to the entry of an order for the destruction of matter pursuant~~

1 to this section. Any matter described in subdivision (a) that is in  
2 the possession of any city, county, city and county, or state official  
3 or agency, including found property, or property obtained as the  
4 result of a case in which no trial was had or that has been disposed  
5 of by way of dismissal or otherwise than by way of conviction  
6 may be ordered destroyed.

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

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

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

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

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

31 502.01. (a) As used in this section:

32 (1) "Property subject to forfeiture" means any property of the  
33 defendant that is illegal telecommunications equipment as defined  
34 in subdivision (g) of Section 502.8, or a computer, computer  
35 system, or computer network, and any software or data residing  
36 thereon, if the telecommunications device, computer, computer  
37 system, or computer network was used in committing a violation  
38 of, or conspiracy to commit a violation of, subdivision (b) of  
39 Section 272, Section 288, 288.2, 311.1, 311.2, 311.3, 311.4, 311.5,  
40 311.10, 311.11, 422, 470, 470a, 472, 475, 476, 480, 483.5, 484g,

1 or subdivision (a), (b), or (d) of Section 484e, subdivision (a) of  
2 Section 484f, subdivision (b) or (c) of Section 484i, subdivision  
3 (e) of Section 502, or Section 502.7, 502.8, 529, 529a, or 530.5,  
4 537e, 593d, 593e, 646.9, or subparagraph (A) of paragraph (4) of  
5 subdivision (j) of Section 647, or was used as a repository for the  
6 storage of software or data obtained in violation of those  
7 provisions. Forfeiture shall not be available for any property used  
8 solely in the commission of an infraction. If the defendant is a  
9 minor, it also includes property of the parent or guardian of the  
10 defendant.

11 (2) “Sentencing court” means the court sentencing a person  
12 found guilty of violating or conspiring to commit a violation of  
13 subdivision (b) of Section 272, Section 288, 288.2, 311.1, 311.2,  
14 311.3, 311.4, 311.5, 311.10, 311.11, 422, 470, 470a, 472, 475,  
15 476, 480, 483.5, 484g, or subdivision (a), (b), or (d) of Section  
16 484e, subdivision (d) of Section 484e, subdivision (a) of Section  
17 484f, subdivision (b) or (c) of Section 484i, subdivision (e) of  
18 Section 502, or Section 502.7, 502.8, 529, 529a, 530.5, 537e, 593d,  
19 593e, or 646.9, or, in the case of a minor, found to be a person  
20 described in Section 602 of the Welfare and Institutions Code  
21 because of a violation of those provisions, the juvenile court.

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

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

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

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

31 (B) When counterfeited but unassembled components of  
32 computer software packages are recovered, including, but not  
33 limited to, counterfeited computer diskettes, instruction manuals,  
34 or licensing envelopes, the “value” of those components of  
35 computer software packages shall be equivalent to the retail price  
36 or fair market price of the number of completed computer software  
37 packages that could have been made from those components.

38 (b) The sentencing court shall, upon petition by the prosecuting  
39 attorney, at any time following sentencing, or by agreement of all  
40 parties, at the time of sentencing, conduct a hearing to determine

1 whether any property or property interest is subject to forfeiture  
2 under this section. At the forfeiture hearing, the prosecuting  
3 attorney shall have the burden of establishing, by a preponderance  
4 of the evidence, that the property or property interests are subject  
5 to forfeiture. The prosecuting attorney may retain seized property  
6 that may be subject to forfeiture until the sentencing hearing.

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

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

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

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

- 37 (1) The court shall determine the value of the property.  
38 (2) The court shall determine the value of each valid interest in  
39 the property.

1 ~~(3) If the value of the property is greater than the value of the~~  
2 ~~interest, the holder of the interest shall be entitled to ownership of~~  
3 ~~the property upon paying the court the difference between the~~  
4 ~~value of the property and the value of the valid interest.~~

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

14 ~~(4) If the value of the property is less than the value of the~~  
15 ~~interest, the designated agency shall sell the property and pay the~~  
16 ~~owner of the interest the proceeds, up to the value of that interest.~~

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

20 ~~(1) The prosecuting agency shall notify the parent or guardian~~  
21 ~~of the forfeiture hearing at least 30 days before the date set for the~~  
22 ~~hearing.~~

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

29 ~~(3) If the minor is convicted of a violation of Section 288, 288.2,~~  
30 ~~311.1, 311.2, 311.3, 311.4, 311.5, 311.10, 311.11, 470, 470a, 472,~~  
31 ~~476, 480, or subdivision (b) of Section 484c, subdivision (d) of~~  
32 ~~Section 484c, subdivision (a) of Section 484f, subdivision (b) of~~  
33 ~~Section 484i, subdivision (c) of Section 502, or Section 502.7,~~  
34 ~~502.8, 529, 529a, or 530.5, within two years after the date on which~~  
35 ~~the minor is sentenced, and the violation involves a computer or~~  
36 ~~telecommunications device owned by the parent or guardian, the~~  
37 ~~original property subject to forfeiture, and the property involved~~  
38 ~~in the new offense, shall be subject to forfeiture notwithstanding~~  
39 ~~paragraph (2).~~

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

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

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

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

24 ~~(2) Second, at the discretion of the court, to one or more of the~~  
25 ~~following agencies or entities:~~

26 ~~(A) The prosecuting agency.~~

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

28 ~~(C) The public entity whose officers or employees conducted~~  
29 ~~the investigation resulting in forfeiture.~~

30 ~~(D) Other state and local public entities, including school~~  
31 ~~districts.~~

32 ~~(E) Nonprofit charitable organizations.~~

33 ~~(h) If the property is to be sold, the court may designate the~~  
34 ~~prosecuting agency or any other agency to sell the property at~~  
35 ~~auction. The proceeds of the sale shall be distributed by the court~~  
36 ~~as follows:~~

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

1 ~~(2) The balance, if any, to be retained by the court, subject to~~  
2 ~~the provisions for distribution under subdivision (g):~~

3 ~~SEC. 3.~~

4 *SECTION 1.* Section 647 of the Penal Code is amended to read:

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

8 (a) Who solicits anyone to engage in or who engages in lewd  
9 or dissolute conduct in any public place or in any place open to  
10 the public or exposed to public view.

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

24 (c) Who accosts other persons in any public place or in any  
25 place open to the public for the purpose of begging or soliciting  
26 alms.

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

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

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

1 or prevents the free use of any street, sidewalk, or other public  
2 way.

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

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

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

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

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

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

34 (j) (1) Any person who looks through a hole or opening, into,  
35 or otherwise views, by means of any instrumentality, including,  
36 but not limited to, a periscope, telescope, binoculars, camera,  
37 motion picture camera, camcorder, or mobile phone, the interior  
38 of a bedroom, bathroom, changing room, fitting room, dressing  
39 room, or tanning booth, or the interior of any other area in which  
40 the occupant has a reasonable expectation of privacy, with the

1 intent to invade the privacy of a person or persons inside. This  
2 subdivision shall not apply to those areas of a private business  
3 used to count currency or other negotiable instruments.

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

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

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

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

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

31 (4) (A) Any person who intentionally distributes the image of  
32 the intimate body part or parts of another identifiable person, or  
33 an image of the person depicted engaged in an act of sexual  
34 intercourse, sodomy, oral copulation, sexual penetration, or an  
35 image of masturbation by the person depicted or in which the  
36 person depicted participates, under circumstances in which the  
37 persons agree or understand that the image shall remain private,  
38 the person distributing the image knows or should know that  
39 distribution of the image will cause serious emotional distress, and  
40 the person depicted suffers that distress.

1 (B) A person intentionally distributes an image described in  
2 subparagraph (A) when he or she personally distributes the image,  
3 or arranges, specifically requests, or intentionally causes another  
4 person to distribute that image.

5 (C) As used in this paragraph, “intimate body part” means any  
6 portion of the genitals, the anus, and in the case of a female, also  
7 includes any portion of the breasts below the top of the areola, that  
8 is either uncovered or clearly visible through clothing.

9 ~~(D) Nothing in this subdivision precludes punishment under  
10 any law providing for greater punishment.~~

11 ~~(E) When a person is granted probation for a conviction under  
12 this paragraph, it shall be a condition of probation that the person  
13 destroy any physical image and permanently delete any digital  
14 image involved in the offense or that could be the basis of a  
15 prosecution under this paragraph, if distributed.~~

16 ~~(F) A court may impose any reasonable condition of probation  
17 limiting or restricting the person’s use of any device for the  
18 creation, storage, or distribution of digital images.~~

19 ~~(G)~~

20 (D) It shall not be a violation of this paragraph to distribute an  
21 image described in subparagraph (A) if any of the following  
22 applies:

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

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

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

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

31 (k) In any accusatory pleading charging a violation of  
32 subdivision (b), if the defendant has been once previously convicted  
33 of a violation of that subdivision, the previous conviction shall be  
34 charged in the accusatory pleading. If the previous conviction is  
35 found to be true by the jury, upon a jury trial, or by the court, upon  
36 a court trial, or is admitted by the defendant, the defendant shall  
37 be imprisoned in a county jail for a period of not less than 45 days  
38 and shall not be eligible for release upon completion of sentence,  
39 on probation, on parole, on work furlough or work release, or on  
40 any other basis until he or she has served a period of not less than

1 45 days in a county jail. In all cases in which probation is granted,  
2 the court shall require as a condition thereof that the person be  
3 confined in a county jail for at least 45 days. In no event does the  
4 court have the power to absolve a person who violates this  
5 subdivision from the obligation of spending at least 45 days in  
6 confinement in a county jail.

7 In any accusatory pleading charging a violation of subdivision  
8 (b), if the defendant has been previously convicted two or more  
9 times of a violation of that subdivision, each of these previous  
10 convictions shall be charged in the accusatory pleading. If two or  
11 more of these previous convictions are found to be true by the jury,  
12 upon a jury trial, or by the court, upon a court trial, or are admitted  
13 by the defendant, the defendant shall be imprisoned in a county  
14 jail for a period of not less than 90 days and shall not be eligible  
15 for release upon completion of sentence, on probation, on parole,  
16 on work furlough or work release, or on any other basis until he  
17 or she has served a period of not less than 90 days in a county jail.  
18 In all cases in which probation is granted, the court shall require  
19 as a condition thereof that the person be confined in a county jail  
20 for at least 90 days. In no event does the court have the power to  
21 absolve a person who violates this subdivision from the obligation  
22 of spending at least 90 days in confinement in a county jail.

23 In addition to any punishment prescribed by this section, a court  
24 may suspend, for not more than 30 days, the privilege of the person  
25 to operate a motor vehicle pursuant to Section 13201.5 of the  
26 Vehicle Code for any violation of subdivision (b) that was  
27 committed within 1,000 feet of a private residence and with the  
28 use of a vehicle. In lieu of the suspension, the court may order a  
29 person's privilege to operate a motor vehicle restricted, for not  
30 more than six months, to necessary travel to and from the person's  
31 place of employment or education. If driving a motor vehicle is  
32 necessary to perform the duties of the person's employment, the  
33 court may also allow the person to drive in that person's scope of  
34 employment.

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

39 (2) If the victim of a violation of subdivision (j) was a minor at  
40 the time of the offense, the violation is punishable by imprisonment

1 in a county jail not exceeding one year, or by a fine not exceeding  
2 two thousand dollars (\$2,000), or by both that fine and  
3 imprisonment.

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

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

17 ~~(b) (1) The jurisdiction of a criminal action for unauthorized~~  
18 ~~use, retention, or transfer of personal identifying information, as~~  
19 ~~defined in subdivision (b) of Section 530.55, shall also include the~~  
20 ~~county where the theft of the personal identifying information~~  
21 ~~occurred, the county in which the victim resided at the time the~~  
22 ~~offense was committed, or the county where the information was~~  
23 ~~used for an illegal purpose. If multiple offenses of unauthorized~~  
24 ~~use of personal identifying information, either all involving the~~  
25 ~~same defendant or defendants and the same personal identifying~~  
26 ~~information belonging to the one person, or all involving the same~~  
27 ~~defendant or defendants and the same scheme or substantially~~  
28 ~~similar activity, occur in multiple jurisdictions, then any of those~~  
29 ~~jurisdictions is a proper jurisdiction for all of the offenses.~~  
30 ~~Jurisdiction also extends to all associated offenses connected~~  
31 ~~together in their commission to the underlying identity theft offense~~  
32 ~~or identity theft offenses.~~

33 ~~(2) When charges alleging multiple offenses of unauthorized~~  
34 ~~use of personal identifying information occurring in multiple~~  
35 ~~territorial jurisdictions are filed in one county pursuant to this~~  
36 ~~section, the court shall hold a hearing to consider whether the~~  
37 ~~matter should proceed in the county of filing, or whether one or~~  
38 ~~more counts should be severed. The district attorney filing the~~  
39 ~~complaint shall present evidence to the court that the district~~  
40 ~~attorney in each county where any of the charges could have been~~

1 filed has agreed that the matter should proceed in the county of  
2 filing. In determining whether all counts in the complaint should  
3 be joined in one county for prosecution, the court shall consider  
4 the location and complexity of the likely evidence, where the  
5 majority of the offenses occurred, whether or not the offenses  
6 involved substantially similar activity or the same scheme, the  
7 rights of the defendant and the people, and the convenience of, or  
8 hardship to, the victim and witnesses.

9 (3) ~~When an action for unauthorized use, retention, or transfer~~  
10 ~~of personal identifying information is filed in the county in which~~  
11 ~~the victim resided at the time the offense was committed, and no~~  
12 ~~other basis for the jurisdiction applies, the court, upon its own~~  
13 ~~motion or the motion of the defendant, shall hold a hearing to~~  
14 ~~determine whether the county of the victim's residence is the proper~~  
15 ~~venue for trial of the case. In ruling on the matter, the court shall~~  
16 ~~consider the rights of the parties, the access of the parties to~~  
17 ~~evidence, the convenience to witnesses, and the interests of justice.~~

18 (e) (1) ~~The jurisdiction of a criminal action for unauthorized~~  
19 ~~distribution of an intimate image under paragraph (4) of subdivision~~  
20 ~~(j) of Section 647 shall also include the county in which the offense~~  
21 ~~occurred, the county in which the victim resided at the time the~~  
22 ~~offense was committed, or the county in which the intimate image~~  
23 ~~was used for an illegal purpose. If multiple offenses of~~  
24 ~~unauthorized distribution of an intimate image, either all involving~~  
25 ~~the same defendant or defendants and the same intimate image~~  
26 ~~belonging to the one person, or all involving the same defendant~~  
27 ~~or defendants and the same scheme or substantially similar activity,~~  
28 ~~occur in multiple jurisdictions, then any of those jurisdictions is a~~  
29 ~~proper jurisdiction for all of the offenses. Jurisdiction also extends~~  
30 ~~to all associated offenses connected together in their commission~~  
31 ~~to the underlying unauthorized distribution of an intimate image.~~

32 (2) ~~When charges alleging multiple offenses of unauthorized~~  
33 ~~distribution of an intimate image occurring in multiple territorial~~  
34 ~~jurisdictions are filed in one county pursuant to this section, the~~  
35 ~~court shall hold a hearing to consider whether the matter should~~  
36 ~~proceed in the county of filing, or whether one or more counts~~  
37 ~~should be severed. The district attorney filing the complaint shall~~  
38 ~~present evidence to the court that the district attorney in each~~  
39 ~~county where any of the charges could have been filed has agreed~~  
40 ~~that the matter should proceed in the county of filing. In~~

1 determining whether all counts in the complaint should be joined  
2 in one county for prosecution, the court shall consider the location  
3 and complexity of the likely evidence, where the majority of the  
4 offenses occurred, whether the offenses involved substantially  
5 similar activity or the same scheme, the rights of the defendant  
6 and the people, and the convenience of, or hardship to, the victim  
7 and witnesses.

8 (3) ~~When an action for unauthorized distribution of an intimate~~  
9 ~~image is filed in the county in which the victim resided at the time~~  
10 ~~the offense was committed, and no other basis for the jurisdiction~~  
11 ~~applies, the court, upon its own motion or the motion of the~~  
12 ~~defendant, shall hold a hearing to determine whether the county~~  
13 ~~of the victim's residence is the proper venue for trial of the case.~~  
14 ~~In ruling on the matter, the court shall consider the rights of the~~  
15 ~~parties, the access of the parties to evidence, the convenience to~~  
16 ~~witnesses, and the interests of justice.~~

17 (d) ~~This section shall not be interpreted to alter victims' rights~~  
18 ~~under Section 530.6.~~

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

20 1524. (a) A search warrant may be issued upon any of the  
21 following grounds:

22 (1) ~~When the property was stolen or embezzled.~~

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

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

30 (4) ~~When the property or things to be seized consist of any item~~  
31 ~~or constitute any evidence that tends to show a felony has been~~  
32 ~~committed, or tends to show that a particular person has committed~~  
33 ~~a felony.~~

34 (5) ~~When the property or things to be seized consist of evidence~~  
35 ~~that tends to show that sexual exploitation of a child, in violation~~  
36 ~~of Section 311.3, or possession of matter depicting sexual conduct~~  
37 ~~of a person under 18 years of age, in violation of Section 311.11,~~  
38 ~~or intentional distribution of an image, in violation of paragraph~~  
39 ~~(4) of subdivision (j) of Section 647, has occurred or is occurring.~~

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

1 ~~(7) When a provider of electronic communication service or~~  
2 ~~remote computing service has records or evidence, as specified in~~  
3 ~~Section 1524.3, showing that property was stolen or embezzled~~  
4 ~~constituting a misdemeanor, or that property or things are in the~~  
5 ~~possession of any person with the intent to use them as a means~~  
6 ~~of committing a misdemeanor public offense, or in the possession~~  
7 ~~of another to whom he or she may have delivered them for the~~  
8 ~~purpose of concealing them or preventing their discovery.~~

9 ~~(8) When the property or things to be seized include an item or~~  
10 ~~any evidence that tends to show a violation of Section 3700.5 of~~  
11 ~~the Labor Code, or tends to show that a particular person has~~  
12 ~~violated Section 3700.5 of the Labor Code.~~

13 ~~(9) When the property or things to be seized include a firearm~~  
14 ~~or any other deadly weapon at the scene of, or at the premises~~  
15 ~~occupied or under the control of the person arrested in connection~~  
16 ~~with, a domestic violence incident involving a threat to human life~~  
17 ~~or a physical assault as provided in Section 18250. This section~~  
18 ~~does not affect warrantless seizures otherwise authorized by Section~~  
19 ~~18250.~~

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

24 ~~(11) When the property or things to be seized include a firearm~~  
25 ~~that is owned by, or in the possession of, or in the custody or~~  
26 ~~control of, a person who is subject to the prohibitions regarding~~  
27 ~~firearms pursuant to Section 6389 of the Family Code, if a~~  
28 ~~prohibited firearm is possessed, owned, in the custody of, or~~  
29 ~~controlled by a person against whom a protective order has been~~  
30 ~~issued pursuant to Section 6218 of the Family Code, the person~~  
31 ~~has been lawfully served with that order, and the person has failed~~  
32 ~~to relinquish the firearm as required by law.~~

33 ~~(12) When the information to be received from the use of a~~  
34 ~~tracking device constitutes evidence that tends to show that either~~  
35 ~~a felony, a misdemeanor violation of the Fish and Game Code, or~~  
36 ~~a misdemeanor violation of the Public Resources Code has been~~  
37 ~~committed or is being committed, tends to show that a particular~~  
38 ~~person has committed a felony, a misdemeanor violation of the~~  
39 ~~Fish and Game Code, or a misdemeanor violation of the Public~~  
40 ~~Resources Code, or is committing a felony, a misdemeanor~~

1 violation of the Fish and Game Code, or a misdemeanor violation  
2 of the Public Resources Code, or will assist in locating an  
3 individual who has committed or is committing a felony, a  
4 misdemeanor violation of the Fish and Game Code, or a  
5 misdemeanor violation of the Public Resources Code. A tracking  
6 device search warrant issued pursuant to this paragraph shall be  
7 executed in a manner meeting the requirements specified in  
8 subdivision (b) of Section 1534.

9 (13) When a sample of the blood of a person constitutes  
10 evidence that tends to show a violation of Section 23140, 23152,  
11 or 23153 of the Vehicle Code and the person from whom the  
12 sample is being sought has refused an officer's request to submit  
13 to, or has failed to complete, a blood test as required by Section  
14 23612 of the Vehicle Code, and the sample will be drawn from  
15 the person in a reasonable, medically approved manner. This  
16 paragraph is not intended to abrogate a court's mandate to  
17 determine the propriety of the issuance of a search warrant on a  
18 case-by-case basis.

19 (b) The property, things, person, or persons described in  
20 subdivision (a) may be taken on the warrant from any place, or  
21 from any person in whose possession the property or things may  
22 be.

23 (c) Notwithstanding subdivision (a) or (b), no search warrant  
24 shall issue for any documentary evidence in the possession or  
25 under the control of any person who is a lawyer as defined in  
26 Section 950 of the Evidence Code, a physician as defined in Section  
27 990 of the Evidence Code, a psychotherapist as defined in Section  
28 1010 of the Evidence Code, or a member of the clergy as defined  
29 in Section 1030 of the Evidence Code, and who is not reasonably  
30 suspected of engaging or having engaged in criminal activity  
31 related to the documentary evidence for which a warrant is  
32 requested unless the following procedure has been complied with:

33 (1) At the time of the issuance of the warrant, the court shall  
34 appoint a special master in accordance with subdivision (d) to  
35 accompany the person who will serve the warrant. Upon service  
36 of the warrant, the special master shall inform the party served of  
37 the specific items being sought and that the party shall have the  
38 opportunity to provide the items requested. If the party, in the  
39 judgment of the special master, fails to provide the items requested,

1 the special master shall conduct a search for the items in the areas  
2 indicated in the search warrant.

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

6 ~~(B) At the hearing, the party searched shall be entitled to raise~~  
7 ~~any issues that may be raised pursuant to Section 1538.5 as well~~  
8 ~~as a claim that the item or items are privileged, as provided by~~  
9 ~~law. The hearing shall be held in the superior court. The court shall~~  
10 ~~provide sufficient time for the parties to obtain counsel and make~~  
11 ~~any motions or present any evidence. The hearing shall be held~~  
12 ~~within three days of the service of the warrant unless the court~~  
13 ~~makes a finding that the expedited hearing is impracticable. In that~~  
14 ~~case the matter shall be heard at the earliest possible time.~~

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

20 ~~(3) The warrant shall, whenever practicable, be served during~~  
21 ~~normal business hours. In addition, the warrant shall be served~~  
22 ~~upon a party who appears to have possession or control of the~~  
23 ~~items sought. If, after reasonable efforts, the party serving the~~  
24 ~~warrant is unable to locate the person, the special master shall seal~~  
25 ~~and return to the court, for determination by the court, any item~~  
26 ~~that appears to be privileged as provided by law.~~

27 ~~(d) (1) As used in this section, a “special master” is an attorney~~  
28 ~~who is a member in good standing of the California State Bar and~~  
29 ~~who has been selected from a list of qualified attorneys that is~~  
30 ~~maintained by the State Bar particularly for the purposes of~~  
31 ~~conducting the searches described in this section. These attorneys~~  
32 ~~shall serve without compensation. A special master shall be~~  
33 ~~considered a public employee, and the governmental entity that~~  
34 ~~caused the search warrant to be issued shall be considered the~~  
35 ~~employer of the special master and the applicable public entity,~~  
36 ~~for purposes of Division 3.6 (commencing with Section 810) of~~  
37 ~~Title 1 of the Government Code, relating to claims and actions~~  
38 ~~against public entities and public employees. In selecting the~~  
39 ~~special master, the court shall make every reasonable effort to~~  
40 ~~ensure that the person selected has no relationship with any of the~~

1 parties involved in the pending matter. Any information obtained  
2 by the special master shall be confidential and may not be divulged  
3 except in direct response to inquiry by the court.

4 (2) In any case in which the magistrate determines that, after  
5 reasonable efforts have been made to obtain a special master, a  
6 special master is not available and would not be available within  
7 a reasonable period of time, the magistrate may direct the party  
8 seeking the order to conduct the search in the manner described  
9 in this section in lieu of the special master.

10 (e) Any search conducted pursuant to this section by a special  
11 master may be conducted in a manner that permits the party serving  
12 the warrant or his or her designee to accompany the special master  
13 as he or she conducts his or her search. However, that party or his  
14 or her designee may not participate in the search nor shall he or  
15 she examine any of the items being searched by the special master  
16 except upon agreement of the party upon whom the warrant has  
17 been served.

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

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

25 (h) Notwithstanding any other law, no claim of attorney work  
26 product as described in Chapter 4 (commencing with Section  
27 2018.010) of Title 4 of Part 4 of the Code of Civil Procedure shall  
28 be sustained where there is probable cause to believe that the  
29 lawyer is engaging or has engaged in criminal activity related to  
30 the documentary evidence for which a warrant is requested unless  
31 it is established at the hearing with respect to the documentary  
32 evidence seized under the warrant that the services of the lawyer  
33 were not sought or obtained to enable or aid anyone to commit or  
34 plan to commit a crime or a fraud.

35 (i) Nothing in this section is intended to limit an attorney’s  
36 ability to request an in camera hearing pursuant to the holding of  
37 the Supreme Court of California in *People v. Superior Court (Laff)*  
38 (2001) 25 Cal.4th 703.

39 (j) In addition to any other circumstance permitting a magistrate  
40 to issue a warrant for a person or property in another county, when

1 the property or things to be seized consist of any item or constitute  
2 any evidence that tends to show a violation of Section 530.5, the  
3 magistrate may issue a warrant to search a person or property  
4 located in another county if the person whose identifying  
5 information was taken or used resides in the same county as the  
6 issuing court.

7 ~~(k) This section shall not be construed to create a cause of action~~  
8 ~~against any foreign or California corporation, its officers,~~  
9 ~~employees, agents, or other specified persons for providing location~~  
10 ~~information.~~

11 ~~SEC. 6.~~

12 *SEC. 2.* No reimbursement is required by this act pursuant to  
13 Section 6 of Article XIII B of the California Constitution because  
14 the only costs that may be incurred by a local agency or school  
15 district will be incurred because this act creates a new crime or  
16 infraction, eliminates a crime or infraction, or changes the penalty  
17 for a crime or infraction, within the meaning of Section 17556 of  
18 the Government Code, or changes the definition of a crime within  
19 the meaning of Section 6 of Article XIII B of the California  
20 Constitution.