

ASSEMBLY BILL

No. 32

Introduced by Assembly Member Waldron

December 1, 2014

An act to amend Sections 502 and 803 of the Penal Code, relating to computer crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 32, as introduced, Waldron. Computer crimes.

Existing law establishes various crimes relating to computer services and systems, including to knowingly and without permission disrupt or cause the disruption of computer services including government computer services or public safety infrastructure computer system computer services, add, alter, damage, delete, or destroy any computer data, software, or program, introduce a computer contaminant, use the Internet domain name or profile of another. Existing law makes a violation of these provisions punishable by specified fines or terms of imprisonment, or by both those fines and imprisonment. Existing law establishes the time limitations during which a criminal complaint may be filed.

This bill would make the commission of any of those crimes that involves acquiring, copying, or distributing a digital image of a person that displays an intimate body part, as defined, of the person additionally punishable by a fine not exceeding \$10,000 per each digital image acquired, copied, or distributed. The bill would, notwithstanding any of those other time limitations, permit a criminal complaint alleging a violation described in the bill to be filed within one year of the date on which that violation was discovered.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 502 of the Penal Code is amended to
2 read:

3 502. (a) It is the intent of the Legislature in enacting this
4 section to expand the degree of protection afforded to individuals,
5 businesses, and governmental agencies from tampering,
6 interference, damage, and unauthorized access to lawfully created
7 computer data and computer systems. The Legislature finds and
8 declares that the proliferation of computer technology has resulted
9 in a concomitant proliferation of computer crime and other forms
10 of unauthorized access to computers, computer systems, and
11 computer data.

12 The Legislature further finds and declares that protection of the
13 integrity of all types and forms of lawfully created computers,
14 computer systems, and computer data is vital to the protection of
15 the privacy of individuals as well as to the well-being of financial
16 institutions, business concerns, governmental agencies, and others
17 within this state that lawfully utilize those computers, computer
18 systems, and data.

19 (b) For the purposes of this section, the following terms have
20 the following meanings:

21 (1) "Access" means to gain entry to, instruct, cause input to,
22 cause output from, cause data processing with, or communicate
23 with, the logical, arithmetical, or memory function resources of a
24 computer, computer system, or computer network.

25 (2) "Computer network" means any system that provides
26 communications between one or more computer systems and
27 input/output devices including, but not limited to, display terminals,
28 remote systems, mobile devices, and printers connected by
29 telecommunication facilities.

30 (3) "Computer program or software" means a set of instructions
31 or statements, and related data, that when executed in actual or
32 modified form, cause a computer, computer system, or computer
33 network to perform specified functions.

34 (4) "Computer services" includes, but is not limited to, computer
35 time, data processing, or storage functions, Internet services,

1 electronic mail services, electronic message services, or other uses
2 of a computer, computer system, or computer network.

3 (5) “Computer system” means a device or collection of devices,
4 including support devices and excluding calculators that are not
5 programmable and capable of being used in conjunction with
6 external files, one or more of which contain computer programs,
7 electronic instructions, input data, and output data, that performs
8 functions including, but not limited to, logic, arithmetic, data
9 storage and retrieval, communication, and control.

10 (6) “Government computer system” means any computer system,
11 or part thereof, that is owned, operated, or used by any federal,
12 state, or local governmental entity.

13 (7) “Public safety infrastructure computer system” means any
14 computer system, or part thereof, that is necessary for the health
15 and safety of the public including computer systems owned,
16 operated, or used by drinking water and wastewater treatment
17 facilities, hospitals, emergency service providers,
18 telecommunication companies, and gas and electric utility
19 companies.

20 (8) “Data” means a representation of information, knowledge,
21 facts, concepts, computer software, computer programs or
22 instructions. Data may be in any form, in storage media, or as
23 stored in the memory of the computer or in transit or presented on
24 a display device.

25 (9) “Supporting documentation” includes, but is not limited to,
26 all information, in any form, pertaining to the design, construction,
27 classification, implementation, use, or modification of a computer,
28 computer system, computer network, computer program, or
29 computer software, which information is not generally available
30 to the public and is necessary for the operation of a computer,
31 computer system, computer network, computer program, or
32 computer software.

33 (10) “Injury” means any alteration, deletion, damage, or
34 destruction of a computer system, computer network, computer
35 program, or data caused by the access, or the denial of access to
36 legitimate users of a computer system, network, or program.

37 (11) “Victim expenditure” means any expenditure reasonably
38 and necessarily incurred by the owner or lessee to verify that a
39 computer system, computer network, computer program, or data

1 was or was not altered, deleted, damaged, or destroyed by the
2 access.

3 (12) “Computer contaminant” means any set of computer
4 instructions that are designed to modify, damage, destroy, record,
5 or transmit information within a computer, computer system, or
6 computer network without the intent or permission of the owner
7 of the information. They include, but are not limited to, a group
8 of computer instructions commonly called viruses or worms, that
9 are self-replicating or self-propagating and are designed to
10 contaminate other computer programs or computer data, consume
11 computer resources, modify, destroy, record, or transmit data, or
12 in some other fashion usurp the normal operation of the computer,
13 computer system, or computer network.

14 (13) “Internet domain name” means a globally unique,
15 hierarchical reference to an Internet host or service, assigned
16 through centralized Internet naming authorities, comprising a series
17 of character strings separated by periods, with the rightmost
18 character string specifying the top of the hierarchy.

19 (14) “Electronic mail” means an electronic message or computer
20 file that is transmitted between two or more telecommunications
21 devices; computers; computer networks, regardless of whether the
22 network is a local, regional, or global network; or electronic devices
23 capable of receiving electronic messages, regardless of whether
24 the message is converted to hard copy format after receipt, viewed
25 upon transmission, or stored for later retrieval.

26 (15) “Profile” means either of the following:

27 (A) A configuration of user data required by a computer so that
28 the user may access programs or services and have the desired
29 functionality on that computer.

30 (B) An Internet Web site user’s personal page or section of a
31 page that is made up of data, in text or graphical form, that displays
32 significant, unique, or identifying information, including, but not
33 limited to, listing acquaintances, interests, associations, activities,
34 or personal statements.

35 (c) Except as provided in subdivision (h), any person who
36 commits any of the following acts is guilty of a public offense:

37 (1) Knowingly accesses and without permission alters, damages,
38 deletes, destroys, or otherwise uses any data, computer, computer
39 system, or computer network in order to either (A) devise or

1 execute any scheme or artifice to defraud, deceive, or extort, or
2 (B) wrongfully control or obtain money, property, or data.

3 (2) Knowingly accesses and without permission takes, copies,
4 or makes use of any data from a computer, computer system, or
5 computer network, or takes or copies any supporting
6 documentation, whether existing or residing internal or external
7 to a computer, computer system, or computer network.

8 (3) Knowingly and without permission uses or causes to be used
9 computer services.

10 (4) Knowingly accesses and without permission adds, alters,
11 damages, deletes, or destroys any data, computer software, or
12 computer programs which reside or exist internal or external to a
13 computer, computer system, or computer network.

14 (5) Knowingly and without permission disrupts or causes the
15 disruption of computer services or denies or causes the denial of
16 computer services to an authorized user of a computer, computer
17 system, or computer network.

18 (6) Knowingly and without permission provides or assists in
19 providing a means of accessing a computer, computer system, or
20 computer network in violation of this section.

21 (7) Knowingly and without permission accesses or causes to be
22 accessed any computer, computer system, or computer network.

23 (8) Knowingly introduces any computer contaminant into any
24 computer, computer system, or computer network.

25 (9) Knowingly and without permission uses the Internet domain
26 name or profile of another individual, corporation, or entity in
27 connection with the sending of one or more electronic mail
28 messages or posts and thereby damages or causes damage to a
29 computer, computer data, computer system, or computer network.

30 (10) Knowingly and without permission disrupts or causes the
31 disruption of government computer services or denies or causes
32 the denial of government computer services to an authorized user
33 of a government computer, computer system, or computer network.

34 (11) Knowingly accesses and without permission adds, alters,
35 damages, deletes, or destroys any data, computer software, or
36 computer programs which reside or exist internal or external to a
37 public safety infrastructure computer system computer, computer
38 system, or computer network.

39 (12) Knowingly and without permission disrupts or causes the
40 disruption of public safety infrastructure computer system computer

1 services or denies or causes the denial of computer services to an
2 authorized user of a public safety infrastructure computer system
3 computer, computer system, or computer network.

4 (13) Knowingly and without permission provides or assists in
5 providing a means of accessing a computer, computer system, or
6 public safety infrastructure computer system computer, computer
7 system, or computer network in violation of this section.

8 (14) Knowingly introduces any computer contaminant into any
9 public safety infrastructure computer system computer, computer
10 system, or computer network.

11 (d) (1) Any person who violates any of the provisions of
12 paragraph (1), (2), (4), (5), (10), (11), or (12) of subdivision (c) is
13 punishable by a fine not exceeding ten thousand dollars (\$10,000),
14 or by imprisonment pursuant to subdivision (h) of Section 1170
15 for 16 months, or two or three years, or by both that fine and
16 imprisonment, or by a fine not exceeding five thousand dollars
17 (\$5,000), or by imprisonment in a county jail not exceeding one
18 year, or by both that fine and imprisonment.

19 (2) Any person who violates paragraph (3) of subdivision (c)
20 is punishable as follows:

21 (A) For the first violation that does not result in injury, and
22 where the value of the computer services used does not exceed
23 nine hundred fifty dollars (\$950), by a fine not exceeding five
24 thousand dollars (\$5,000), or by imprisonment in a county jail not
25 exceeding one year, or by both that fine and imprisonment.

26 (B) For any violation that results in a victim expenditure in an
27 amount greater than five thousand dollars (\$5,000) or in an injury,
28 or if the value of the computer services used exceeds nine hundred
29 fifty dollars (\$950), or for any second or subsequent violation, by
30 a fine not exceeding ten thousand dollars (\$10,000), or by
31 imprisonment pursuant to subdivision (h) of Section 1170 for 16
32 months, or two or three years, or by both that fine and
33 imprisonment, or by a fine not exceeding five thousand dollars
34 (\$5,000), or by imprisonment in a county jail not exceeding one
35 year, or by both that fine and imprisonment.

36 (3) Any person who violates paragraph (6), (7), or (13) of
37 subdivision (c) is punishable as follows:

38 (A) For a first violation that does not result in injury, an
39 infraction punishable by a fine not exceeding one thousand dollars
40 (\$1,000).

1 (B) For any violation that results in a victim expenditure in an
2 amount not greater than five thousand dollars (\$5,000), or for a
3 second or subsequent violation, by a fine not exceeding five
4 thousand dollars (\$5,000), or by imprisonment in a county jail not
5 exceeding one year, or by both that fine and imprisonment.

6 (C) For any violation that results in a victim expenditure in an
7 amount greater than five thousand dollars (\$5,000), by a fine not
8 exceeding ten thousand dollars (\$10,000), or by imprisonment
9 pursuant to subdivision (h) of Section 1170 for 16 months, or two
10 or three years, or by both that fine and imprisonment, or by a fine
11 not exceeding five thousand dollars (\$5,000), or by imprisonment
12 in a county jail not exceeding one year, or by both that fine and
13 imprisonment.

14 (4) Any person who violates paragraph (8) or (14) of subdivision
15 (c) is punishable as follows:

16 (A) For a first violation that does not result in injury, a
17 misdemeanor punishable by a fine not exceeding five thousand
18 dollars (\$5,000), or by imprisonment in a county jail not exceeding
19 one year, or by both that fine and imprisonment.

20 (B) For any violation that results in injury, or for a second or
21 subsequent violation, by a fine not exceeding ten thousand dollars
22 (\$10,000), or by imprisonment in a county jail not exceeding one
23 year, or by imprisonment pursuant to subdivision (h) of Section
24 1170, or by both that fine and imprisonment.

25 (5) Any person who violates paragraph (9) of subdivision (c)
26 is punishable as follows:

27 (A) For a first violation that does not result in injury, an
28 infraction punishable by a fine not exceeding one thousand dollars
29 (\$1,000).

30 (B) For any violation that results in injury, or for a second or
31 subsequent violation, by a fine not exceeding five thousand dollars
32 (\$5,000), or by imprisonment in a county jail not exceeding one
33 year, or by both that fine and imprisonment.

34 (e) (1) In addition to any other civil remedy available, the owner
35 or lessee of the computer, computer system, computer network,
36 computer program, or data who suffers damage or loss by reason
37 of a violation of any of the provisions of subdivision (c) may bring
38 a civil action against the violator for compensatory damages and
39 injunctive relief or other equitable relief. Compensatory damages
40 shall include any expenditure reasonably and necessarily incurred

1 by the owner or lessee to verify that a computer system, computer
2 network, computer program, or data was or was not altered,
3 damaged, or deleted by the access. For the purposes of actions
4 authorized by this subdivision, the conduct of an unemancipated
5 minor shall be imputed to the parent or legal guardian having
6 control or custody of the minor, pursuant to the provisions of
7 Section 1714.1 of the Civil Code.

8 (2) In any action brought pursuant to this subdivision the court
9 may award reasonable attorney's fees.

10 (3) A community college, state university, or academic
11 institution accredited in this state is required to include
12 computer-related crimes as a specific violation of college or
13 university student conduct policies and regulations that may subject
14 a student to disciplinary sanctions up to and including dismissal
15 from the academic institution. This paragraph shall not apply to
16 the University of California unless the Board of Regents adopts a
17 resolution to that effect.

18 (4) In any action brought pursuant to this subdivision for a
19 willful violation of the provisions of subdivision (c), where it is
20 proved by clear and convincing evidence that a defendant has been
21 guilty of oppression, fraud, or malice as defined in subdivision (c)
22 of Section 3294 of the Civil Code, the court may additionally award
23 punitive or exemplary damages.

24 (5) No action may be brought pursuant to this subdivision unless
25 it is initiated within three years of the date of the act complained
26 of, or the date of the discovery of the damage, whichever is later.

27 (f) This section shall not be construed to preclude the
28 applicability of any other provision of the criminal law of this state
29 which applies or may apply to any transaction, nor shall it make
30 illegal any employee labor relations activities that are within the
31 scope and protection of state or federal labor laws.

32 (g) Any computer, computer system, computer network, or any
33 software or data, owned by the defendant, that is used during the
34 commission of any public offense described in subdivision (c) or
35 any computer, owned by the defendant, which is used as a
36 repository for the storage of software or data illegally obtained in
37 violation of subdivision (c) shall be subject to forfeiture, as
38 specified in Section 502.01.

39 (h) (1) Subdivision (c) does not apply to punish any acts which
40 are committed by a person within the scope of his or her lawful

1 employment. For purposes of this section, a person acts within the
2 scope of his or her employment when he or she performs acts
3 which are reasonably necessary to the performance of his or her
4 work assignment.

5 (2) Paragraph (3) of subdivision (c) does not apply to penalize
6 any acts committed by a person acting outside of his or her lawful
7 employment, provided that the employee's activities do not cause
8 an injury, to the employer or another, or provided that the value
9 of supplies or computer services which are used does not exceed
10 an accumulated total of two hundred fifty dollars (\$250).

11 (i) No activity exempted from prosecution under paragraph (2)
12 of subdivision (h) which incidentally violates paragraph (2), (4),
13 or (7) of subdivision (c) shall be prosecuted under those paragraphs.

14 (j) For purposes of bringing a civil or a criminal action under
15 this section, a person who causes, by any means, the access of a
16 computer, computer system, or computer network in one
17 jurisdiction from another jurisdiction is deemed to have personally
18 accessed the computer, computer system, or computer network in
19 each jurisdiction.

20 (k) In determining the terms and conditions applicable to a
21 person convicted of a violation of this section the court shall
22 consider the following:

23 (1) The court shall consider prohibitions on access to and use
24 of computers.

25 (2) Except as otherwise required by law, the court shall consider
26 alternate sentencing, including community service, if the defendant
27 shows remorse and recognition of the wrongdoing, and an
28 inclination not to repeat the offense.

29 *(l) (1) A person who commits a violation of this section that*
30 *involves acquiring, copying, or distributing one or more digital*
31 *images of a person that displays an intimate body part of the person*
32 *is subject to a fine not exceeding ten thousand dollars (\$10,000)*
33 *per each image acquired, copied, or distributed.*

34 *(2) A fine imposed pursuant to this subdivision is in addition to*
35 *any other penalty or punishment provided for conduct that violates*
36 *this subdivision.*

37 *(3) A fine pursuant to this subdivision may be imposed only*
38 *pursuant to an action brought by a district attorney.*

39 *(4) As used in this subdivision, "intimate body part" means any*
40 *portion of the genitals, the anus, and in the case of a female also*

1 *includes any portion of the breasts below the top of the areola,*
2 *that is either uncovered or clearly visible through clothing.*

3 SEC. 2. Section 803 of the Penal Code is amended to read:

4 803. (a) Except as provided in this section, a limitation of time
5 prescribed in this chapter is not tolled or extended for any reason.

6 (b) No time during which prosecution of the same person for
7 the same conduct is pending in a court of this state is a part of a
8 limitation of time prescribed in this chapter.

9 (c) A limitation of time prescribed in this chapter does not
10 commence to run until the discovery of an offense described in
11 this subdivision. This subdivision applies to an offense punishable
12 by imprisonment in the state prison or imprisonment pursuant to
13 subdivision (h) of Section 1170, a material element of which is
14 fraud or breach of a fiduciary obligation, the commission of the
15 crimes of theft or embezzlement upon an elder or dependent adult,
16 or the basis of which is misconduct in office by a public officer,
17 employee, or appointee, including, but not limited to, the following
18 offenses:

19 (1) Grand theft of any type, forgery, falsification of public
20 records, or acceptance of a bribe by a public official or a public
21 employee.

22 (2) A violation of Section 72, 118, 118a, 132, 134, or 186.10.

23 (3) A violation of Section 25540, of any type, or Section 25541
24 of the Corporations Code.

25 (4) A violation of Section 1090 or 27443 of the Government
26 Code.

27 (5) Felony welfare fraud or Medi-Cal fraud in violation of
28 Section 11483 or 14107 of the Welfare and Institutions Code.

29 (6) Felony insurance fraud in violation of Section 548 or 550
30 of this code or ~~former Section 1871.1, or Section 1871.4, Section~~
31 ~~1871.4~~ of the Insurance Code.

32 (7) A violation of Section 580, 581, 582, 583, or 584 of the
33 Business and Professions Code.

34 (8) A violation of Section 22430 of the Business and Professions
35 Code.

36 (9) A violation of Section 103800 of the Health and Safety
37 Code.

38 (10) A violation of Section 529a.

39 (11) A violation of subdivision (d) or (e) of Section 368.

1 (d) If the defendant is out of the state when or after the offense
2 is committed, the prosecution may be commenced as provided in
3 Section 804 within the limitations of time prescribed by this
4 chapter, and no time up to a maximum of three years during which
5 the defendant is not within the state shall be a part of those
6 limitations.

7 (e) A limitation of time prescribed in this chapter does not
8 commence to run until the offense has been discovered, or could
9 have reasonably been discovered, with regard to offenses under
10 Division 7 (commencing with Section 13000) of the Water Code,
11 under Chapter 6.5 (commencing with Section 25100) of, Chapter
12 6.7 (commencing with Section 25280) of, or Chapter 6.8
13 (commencing with Section 25300) of, Division 20 of, or Part 4
14 (commencing with Section 41500) of Division 26 of, the Health
15 and Safety Code, or under Section 386, or offenses under Chapter
16 5 (commencing with Section 2000) of Division 2 of, Chapter 9
17 (commencing with Section 4000) of Division 2 of, Section 6126
18 of, Chapter 10 (commencing with Section 7301) of Division 3 of,
19 or Chapter 19.5 (commencing with Section 22440) of Division 8
20 of, the Business and Professions Code.

21 (f) (1) Notwithstanding any other limitation of time described
22 in this chapter, a criminal complaint may be filed within one year
23 of the date of a report to a California law enforcement agency by
24 a person of any age alleging that he or she, while under the age of
25 18 years, was the victim of a crime described in Section 261, 286,
26 288, 288a, 288.5, or ~~289, or Section 289.5, as enacted by Chapter~~
27 ~~293 of the Statutes of 1991 relating to penetration by an unknown~~
28 ~~object. 289.~~

29 (2) This subdivision applies only if all of the following occur:

30 (A) The limitation period specified in Section 800, 801, or 801.1,
31 whichever is later, has expired.

32 (B) The crime involved substantial sexual conduct, as described
33 in subdivision (b) of Section 1203.066, excluding masturbation
34 that is not mutual.

35 (C) There is independent evidence that corroborates the victim's
36 allegation. If the victim was 21 years of age or older at the time
37 of the report, the independent evidence shall clearly and
38 convincingly corroborate the victim's allegation.

39 (3) No evidence may be used to corroborate the victim's
40 allegation that otherwise would be inadmissible during trial.

1 Independent evidence does not include the opinions of mental
2 health professionals.

3 (4) (A) In a criminal investigation involving any of the crimes
4 listed in paragraph (1) committed against a child, when the
5 applicable limitations period has not expired, that period shall be
6 tolled from the time a party initiates litigation challenging a grand
7 jury subpoena until the end of the litigation, including any
8 associated writ or appellate proceeding, or until the final disclosure
9 of evidence to the investigating or prosecuting agency, if that
10 disclosure is ordered pursuant to the subpoena after the litigation.

11 (B) Nothing in this subdivision affects the definition or
12 applicability of any evidentiary privilege.

13 (C) This subdivision shall not apply where a court finds that the
14 grand jury subpoena was issued or caused to be issued in bad faith.

15 (g) (1) Notwithstanding any other limitation of time described
16 in this chapter, a criminal complaint may be filed within one year
17 of the date on which the identity of the suspect is conclusively
18 established by DNA testing, if both of the following conditions
19 are met:

20 (A) The crime is one that is described in subdivision (c) of
21 Section 290.

22 (B) The offense was committed prior to January 1, 2001, and
23 biological evidence collected in connection with the offense is
24 analyzed for DNA type no later than January 1, 2004, or the offense
25 was committed on or after January 1, 2001, and biological evidence
26 collected in connection with the offense is analyzed for DNA type
27 no later than two years from the date of the offense.

28 (2) For purposes of this section, “DNA” means deoxyribonucleic
29 acid.

30 (h) For any crime, the proof of which depends substantially
31 upon evidence that was seized under a warrant, but which is
32 unavailable to the prosecuting authority under the procedures
33 described in *People v. Superior Court (Laff)* (2001) 25 Cal.4th
34 703, *People v. Superior Court (Bauman & Rose)* (1995) 37
35 Cal.App.4th 1757, or subdivision (c) of Section 1524, relating to
36 claims of evidentiary privilege or attorney work product, the
37 limitation of time prescribed in this chapter shall be tolled from
38 the time of the seizure until final disclosure of the evidence to the
39 prosecuting authority. Nothing in this section otherwise affects

1 the definition or applicability of any evidentiary privilege or
2 attorney work product.

3 (i) Notwithstanding any other limitation of time described in
4 this chapter, a criminal complaint may be filed within one year of
5 the date on which a hidden recording is discovered related to a
6 violation of paragraph (2) or (3) of subdivision (j) of Section 647.

7 (j) Notwithstanding any other limitation of time described in
8 this chapter, if a person flees the scene of an accident that caused
9 death or permanent, serious injury, as defined in subdivision (d)
10 of Section 20001 of the Vehicle Code, a criminal complaint brought
11 pursuant to paragraph (2) of subdivision (b) of Section 20001 of
12 the Vehicle Code may be filed within the applicable time period
13 described in Section 801 or 802 or one year after the person is
14 initially identified by law enforcement as a suspect in the
15 commission of the offense, whichever is later, but in no case later
16 than six years after the commission of the offense.

17 (k) *Notwithstanding any other limitation of time described in*
18 *this chapter, a criminal complaint alleging a violation described*
19 *in subdivision (l) of Section 502 may be filed within one year of*
20 *the date on which the alleged violation is discovered.*