

Assembly Bill No. 1310

CHAPTER 643

An act to amend Sections 786 and 1524.3 of the Penal Code, relating to disorderly conduct.

[Approved by Governor October 8, 2015. Filed with
Secretary of State October 8, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1310, Gatto. Disorderly conduct: unlawful distribution of image.

Existing law makes it a misdemeanor to look through a hole or opening, into, or to view, by means of any instrumentality, the interior of an area in which an occupant has a reasonable expectation of privacy with the intent to invade the privacy of that person. Existing law makes it a misdemeanor to record another person under or through the clothing worn by that person, without the consent or knowledge of the person, under circumstances in which the person has a reasonable expectation of privacy. Existing law makes it a misdemeanor to secretly record another person in a state of full or partial undress without the consent or knowledge of that person, in an area in which that person has a reasonable expectation of privacy. Existing law makes it a misdemeanor to intentionally distribute an image of the intimate body part or parts of another 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.

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.

This bill would apply those jurisdictional provisions to the misdemeanors described above.

Existing law details procedures for a governmental entity to gather specified records from a provider of electronic communication service or a remote computing service by search warrant. Existing law specifies that no notice is required to be given to a subscriber or customer by a governmental entity receiving records pursuant to these procedures.

This bill would additionally authorize a governmental entity to use those procedures to gather the contents of communications between the subscriber and the service provider. The bill would require a search warrant used under those procedures to be limited to only that information necessary to achieve

the objective of the warrant, as specified. The bill would require information obtained through the execution of a search warrant pursuant that is unrelated to the objective of the warrant to be sealed and not be subject to further review without an order from the court. The bill would require the governmental entity to provide a specified notice to the customer or subscriber upon receipt of the requested records. The bill would authorize a delay of that notice in 90-day increments if there is reason to believe notification would may have an adverse effect, as defined.

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

SECTION 1. Section 786 of the Penal Code is amended to read:

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

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

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

where the majority of the offenses occurred, whether or not the offenses involved substantially similar activity or the same scheme, the rights of the defendant and the people, and the convenience of, or hardship to, the victim and witnesses.

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

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

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

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

(d) This section does not alter victims' rights under Section 530.6.

SEC. 2. Section 1524.3 of the Penal Code is amended to read:

1524.3. (a) A provider of electronic communication service or remote computing service, as used in Chapter 121 (commencing with Section 2701) of Title 18 of the United States Code, shall disclose to a governmental prosecuting or investigating agency the name, address, local and long distance telephone toll billing records, telephone number or other subscriber number or identity, and length of service of a subscriber to or customer of that service, the types of services the subscriber or customer utilized, and the contents of communication originated by or addressed to the service provider when the governmental entity is granted a search warrant pursuant to paragraph (7) of subdivision (a) of Section 1524.

(b) The search warrant shall be limited to only that information necessary to achieve the objective of the warrant, including by specifying the target individuals or accounts, the applications or services, the types of information, and the time periods covered, as appropriate.

(c) Information obtained through the execution of a search warrant pursuant to this section that is unrelated to the objective of the warrant shall be sealed and not be subject to further review without an order from the court.

(d) (1) A governmental entity receiving subscriber records or information under this section shall provide notice to a subscriber or customer upon receipt of the requested records. The notification may be delayed by the court, in increments of 90 days, upon a showing that there is reason to believe that notification of the existence of the search warrant may have an adverse result.

(2) An “adverse result” for purposes of paragraph (1) means any of the following:

- (A) Endangering the life or physical safety of an individual.
- (B) Flight from prosecution.
- (C) Tampering or destruction of evidence.
- (D) Intimidation of a potential witness.
- (E) Otherwise seriously jeopardizing an investigation or unduly delaying a trial.

(e) Upon the expiration of the period of delay for the notification, the governmental entity shall, by regular mail or email, provide a copy of the process or request and a notice, to the subscriber or customer. The notice shall accomplish all of the following:

(1) State the nature of the law enforcement inquiry with reasonable specificity.

(2) Inform the subscriber or customer that information maintained for the subscriber or customer by the service provider named in the process or request was supplied to or requested by the governmental entity, and the date upon which the information was supplied, and the request was made.

(3) Inform the subscriber or customer that notification to the subscriber or customer was delayed, and which court issued the order pursuant to which the notification was delayed.

(4) Provide a copy of the written inventory of the property that was taken that was provided to the court pursuant to Section 1537.

(f) A court issuing a search warrant pursuant to paragraph (7) of subdivision (a) of Section 1524, on a motion made promptly by the service provider, may quash or modify the warrant if the information or records requested are unusually voluminous in nature or compliance with the warrant otherwise would cause an undue burden on the provider.

(g) A provider of wire or electronic communication services or a remote computing service, upon the request of a peace officer, shall take all necessary steps to preserve records and other evidence in its possession pending the issuance of a search warrant or a request in writing and an affidavit declaring an intent to file a warrant to the provider. Records shall be retained for a period of 90 days, which shall be extended for an additional 90-day period upon a renewed request by the peace officer.

(h) No cause of action shall be brought against any provider, its officers, employees, or agents for providing information, facilities, or assistance in good faith compliance with a search warrant.