

AMENDED IN ASSEMBLY MARCH 28, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1909

Introduced by Assembly Member Lopez

February 11, 2016

~~An act to amend Section 594 of the Penal Code, relating to vandalism.~~
An act to amend Section 141 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 1909, as amended, Lopez. ~~Vandalism.~~ *Falsifying evidence.*

Existing law makes it a misdemeanor for a person, or a felony for a peace officer, to knowingly, willfully, intentionally, and wrongfully alter, modify, plant, place, manufacture, conceal, or move any physical matter, digital image, or video recording, with the specific intent that the action will result in a person being charged with a crime.

This bill would make it a felony punishable by imprisonment for 2, 3, or 5 years for a prosecuting attorney to knowingly, willfully, intentionally, and wrongfully alter, modify, or withhold any physical matter, digital image, video recording, or relevant exculpatory material or information that is required to be disclosed with the specific intent that the physical matter, digital image, video recording, or relevant exculpatory material or information will be concealed or destroyed, or fraudulently represented as the original evidence upon a trial, proceeding, or inquiry.

By creating a new crime, this bill 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.

~~Existing law, amended by Proposition 21, an initiative measure enacted by voters at the March 7, 2000, statewide primary election, makes a person who maliciously commits specified destructive acts with respect to another’s property guilty of vandalism. The initiative measure reduced from \$50,000 to \$400 or more, the amount of damage caused by the vandalism that would result in punishment by imprisonment in state prison or a county jail for a term not exceeding one year, by a fine of not more than \$10,000, or by both that fine and imprisonment, as specified. Existing law states if the amount of damage is less than \$400, vandalism is punishable by imprisonment in a county jail not exceeding one year, by a fine of not more than \$1,000, or by both that fine and imprisonment.~~

~~This bill would increase the damages threshold for determining the level of punishment for vandalism from \$400 to \$950.~~

~~Proposition 21 prohibits the Legislature from amending that act except by a roll call vote, two-thirds of the membership of each house concurring.~~

~~Because the bill would increase the threshold of vandalism damages that would result in specified punishment and thereby amend a provision of that initiative measure, it would therefore require a $\frac{2}{3}$ vote.~~

~~Vote: $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~no~~-yes.~~

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

- 1 SECTION 1. Section 141 of the Penal Code is amended to
- 2 read:
- 3 141. (a) Except as provided in subdivision (b), a person who
- 4 knowingly, willfully, intentionally, and wrongfully alters, modifies,
- 5 plants, places, manufactures, conceals, or moves any physical
- 6 matter, digital image, or video recording, with specific intent that
- 7 the action will result in a person being charged with a crime or
- 8 with the specific intent that the physical matter will be wrongfully
- 9 produced as genuine or true upon a trial, proceeding, or inquiry,
- 10 is guilty of a misdemeanor.

1 (b) A peace officer who knowingly, willfully, intentionally, and
 2 wrongfully alters, modifies, plants, places, manufactures, conceals,
 3 or moves any physical matter, digital image, or video recording,
 4 with specific intent that the action will result in a person being
 5 charged with a crime or with the specific intent that the physical
 6 matter, digital image, or video recording will be concealed or
 7 destroyed, or fraudulently represented as the original evidence
 8 upon a trial, proceeding, or inquiry, is guilty of a felony punishable
 9 by two, three, or five years in the state prison.

10 (c) *A prosecuting attorney who knowingly, willfully,*
 11 *intentionally, and wrongfully alters, modifies, or withholds any*
 12 *physical matter, digital image, video recording, or relevant*
 13 *exculpatory material or information that is required to be*
 14 *disclosed, with the specific intent that the physical matter, digital*
 15 *image, video recording, or relevant exculpatory material or*
 16 *information will be concealed or destroyed, or fraudulently*
 17 *represented as the original evidence upon a trial, proceeding, or*
 18 *inquiry, is guilty of a felony punishable by imprisonment pursuant*
 19 *to subdivision (h) of Section 1170 for two, three, or five years.*

20 (e)

21 (d) This section does not preclude prosecution under both this
 22 section and any other law.

23 *SEC. 2. No reimbursement is required by this act pursuant to*
 24 *Section 6 of Article XIII B of the California Constitution because*
 25 *the only costs that may be incurred by a local agency or school*
 26 *district will be incurred because this act creates a new crime or*
 27 *infraction, eliminates a crime or infraction, or changes the penalty*
 28 *for a crime or infraction, within the meaning of Section 17556 of*
 29 *the Government Code, or changes the definition of a crime within*
 30 *the meaning of Section 6 of Article XIII B of the California*
 31 *Constitution.*

32 ~~SECTION 1. Section 594 of the Penal Code is amended to~~
 33 ~~read:~~

34 ~~594. (a) Every person who maliciously commits any of the~~
 35 ~~following acts with respect to any real or personal property not his~~
 36 ~~or her own, in cases other than those specified by state law, is~~
 37 ~~guilty of vandalism:~~

- 38 ~~(1) Defaces with graffiti or other inscribed material.~~
- 39 ~~(2) Damages.~~
- 40 ~~(3) Destroys.~~

1 Whenever a person violates this subdivision with respect to real
2 property, ~~vehicles, signs, fixtures, furnishings, or property~~
3 ~~belonging to any public entity, as defined by Section 811.2 of the~~
4 ~~Government Code, or the federal government, it shall be a~~
5 ~~permissive inference that the person neither owned the property~~
6 ~~nor had the permission of the owner to deface, damage, or destroy~~
7 ~~the property.~~

8 (b) (1) ~~If the amount of defacement, damage, or destruction is~~
9 ~~nine hundred fifty dollars (\$950) or more, vandalism is punishable~~
10 ~~by imprisonment pursuant to subdivision (h) of Section 1170 or~~
11 ~~in a county jail not exceeding one year, or by a fine of not more~~
12 ~~than ten thousand dollars (\$10,000), or if the amount of~~
13 ~~defacement, damage, or destruction is ten thousand dollars~~
14 ~~(\$10,000) or more, by a fine of not more than fifty thousand dollars~~
15 ~~(\$50,000), or by both that fine and imprisonment.~~

16 (2) (A) ~~If the amount of defacement, damage, or destruction is~~
17 ~~less than nine hundred fifty dollars (\$950), vandalism is punishable~~
18 ~~by imprisonment in a county jail not exceeding one year, or by a~~
19 ~~fine of not more than one thousand dollars (\$1,000), or by both~~
20 ~~that fine and imprisonment.~~

21 (B) ~~If the amount of defacement, damage, or destruction is less~~
22 ~~than nine hundred fifty dollars (\$950), and the defendant has been~~
23 ~~previously convicted of vandalism or affixing graffiti or other~~
24 ~~inscribed material under Section 594, 594.3, 594.4, 640.5, 640.6,~~
25 ~~or 640.7, vandalism is punishable by imprisonment in a county~~
26 ~~jail for not more than one year, or by a fine of not more than five~~
27 ~~thousand dollars (\$5,000), or by both that fine and imprisonment.~~

28 (e) ~~Upon conviction of any person under this section for acts~~
29 ~~of vandalism consisting of defacing property with graffiti or other~~
30 ~~inscribed materials, the court shall, when appropriate and feasible,~~
31 ~~in addition to any punishment imposed under subdivision (b), order~~
32 ~~the defendant to clean up, repair, or replace the damaged property~~
33 ~~himself or herself, or order the defendant, and his or her parents~~
34 ~~or guardians if the defendant is a minor, to keep the damaged~~
35 ~~property or another specified property in the community free of~~
36 ~~graffiti for up to one year. Participation of a parent or guardian is~~
37 ~~not required under this subdivision if the court deems this~~
38 ~~participation to be detrimental to the defendant, or if the parent or~~
39 ~~guardian is a single parent who must care for young children. If~~

1 the court finds that graffiti cleanup is inappropriate, the court shall
2 consider other types of community service, where feasible.

3 (d) If a minor is personally unable to pay a fine levied for acts
4 prohibited by this section, the parent of that minor shall be liable
5 for payment of the fine. A court may waive payment of the fine,
6 or any part thereof, by the parent upon a finding of good cause.

7 (e) As used in this section, the term “graffiti or other inscribed
8 material” includes any unauthorized inscription, word, figure,
9 mark, or design, that is written, marked, etched, scratched, drawn,
10 or painted on real or personal property.

11 (f) The court may order any person ordered to perform
12 community service or graffiti removal pursuant to paragraph (1)
13 of subdivision (c) to undergo counseling.