

AMENDED IN SENATE MARCH 17, 2015

SENATE BILL

No. 30

Introduced by Senator Gaines

December 1, 2014

An act to ~~add Section 1708.5.5 to the Civil Code, amend Section 502 of, and to add Sections 487k and 487l to, the Penal Code, relating to civil actions: theft.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 30, as amended, Gaines. ~~Noneconsensual sexual intercourse: minors. Theft: vehicles.~~

Under existing law, every person who feloniously steals, takes, carries, leads, or drives away the personal property of another, or who fraudulently appropriates the property which has been entrusted to him or her, among other things, is guilty of theft. Under existing law, grand theft is generally theft committed when the money, labor, or real or personal property taken is of a value exceeding \$950, or when certain kinds of property are taken. Under existing law, grand theft is punishable either as a felony or a misdemeanor. The Safe Neighborhoods and Schools Act, enacted by Proposition 47, as approved by the voters at the November 4, 2014, statewide general election, makes the theft of property that does not exceed \$950 in value petty theft, and makes the crime punishable as a misdemeanor, except in cases when the defendant has previously been convicted of one or more specified serious or violent felonies or an offense requiring registration as a sex offender.

This bill would make a person who steals, takes, or carries away a motorized vehicle with a value exceeding \$950 by commandeering the vehicle through access of the vehicle's operating system, as specified,

without the consent of the owner or operator of the vehicle guilty of the felony of grand theft, and punishable by imprisonment in the state prison for 3 years. This bill would make a person who steals, takes, or carries away in the same manner a motorized vehicle with a value not exceeding \$950 guilty of petty theft, punishable by a fine not exceeding \$1,000, or by imprisonment in the county jail not exceeding 6 months, or both. This bill would make a conforming change to a related provision.

By expanding the scope of a 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.

~~Under existing criminal law, unlawful sexual intercourse is an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, if the person is under 18 years of age. Existing civil law makes a person who commits a sexual battery, as defined, upon another liable to that person for damages and authorizes a court to award equitable relief, as specified.~~

~~This bill would, under civil law, define nonconsensual sexual intercourse as an act of sexual intercourse between an adult and a person who is not the spouse of the adult, if the person is under 18 years of age.~~

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

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

- 1 SECTION 1. Section 487k is added to the Penal Code, to read:
- 2 487k. (a) A person who steals, takes, or carries away the
- 3 vehicle of another that is of a value exceeding nine hundred fifty
- 4 dollars (\$950) by remotely commandeering the vehicle through
- 5 access of a vehicle operating system without the consent of the
- 6 owner or operator of the vehicle is guilty of the felony of grand
- 7 theft, and is punishable by imprisonment in the state prison for 3
- 8 years.
- 9 (b) For the purposes of this section, the term “vehicle” is limited
- 10 to motorized vehicles.

1 (c) For the purposes of this section, the term “vehicle operating
2 system” means a device or collection of devices, including support
3 devices, installed in a vehicle, one or more of which contain
4 computer programs, electronic instructions, input data, and output
5 data, that performs functions including, but not limited to, logic,
6 arithmetic, data storage and retrieval, communication, and control
7 of the vehicle’s steering, propulsion, braking, onboard navigation,
8 or global positioning systems.

9 (d) For the purposes of this section, the term “access” includes
10 transmission of navigational data that causes the operator or
11 vehicle operating system in immediate control of the vehicle to
12 alter the vehicle’s path or course of travel.

13 SEC. 2. Section 487I is added to the Penal Code, to read:

14 487I. (a) A person who steals, takes, or carries away the
15 vehicle of another that is of a value not exceeding nine hundred
16 fifty dollars (\$950) by remotely commandeering the vehicle through
17 access of a vehicle operating system without the consent of the
18 owner or operator of the vehicle is guilty of petty theft.

19 (b) For the purposes of this section, the term “vehicle” is limited
20 to motorized vehicles.

21 (c) For the purposes of this section, the term “vehicle operating
22 system” means a device or collection of devices, including support
23 devices, installed in a vehicle, one or more of which contain
24 computer programs, electronic instructions, input data, and output
25 data, that performs functions including, but not limited to, logic,
26 arithmetic, data storage and retrieval, communication, and control
27 of the vehicle’s steering, propulsion, braking, onboard navigation,
28 or global positioning systems.

29 (d) For the purposes of this section, the term “access” includes
30 transmission of navigational data that causes the operator or
31 vehicle operating system in immediate control of the vehicle to
32 alter the vehicle’s path or course of travel.

33 SEC. 3. Section 502 of the Penal Code is amended to read:

34 502. (a) It is the intent of the Legislature in enacting this
35 section to expand the degree of protection afforded to individuals,
36 businesses, and governmental agencies from tampering,
37 interference, damage, and unauthorized access to lawfully created
38 computer data and computer systems. The Legislature finds and
39 declares that the proliferation of computer technology has resulted
40 in a concomitant proliferation of computer crime and other forms

1 of unauthorized access to computers, computer systems, and
2 computer data.

3 The Legislature further finds and declares that protection of the
4 integrity of all types and forms of lawfully created computers,
5 computer systems, and computer data is vital to the protection of
6 the privacy of individuals as well as to the well-being of financial
7 institutions, business concerns, governmental agencies, and others
8 within this state that lawfully utilize those computers, computer
9 systems, and data.

10 (b) For the purposes of this section, the following terms have
11 the following meanings:

12 (1) “Access” means to gain entry to, instruct, cause input to,
13 cause output from, cause data processing with, or communicate
14 with, the logical, arithmetical, or memory function resources of a
15 computer, computer system, or computer network.

16 (2) “Computer network” means any system that provides
17 communications between one or more computer systems and
18 input/output devices including, but not limited to, display terminals,
19 remote systems, mobile devices, and printers connected by
20 telecommunication facilities.

21 (3) “Computer program or software” means a set of instructions
22 or statements, and related data, that when executed in actual or
23 modified form, cause a computer, computer system, or computer
24 network to perform specified functions.

25 (4) “Computer services” includes, but is not limited to, computer
26 time, data processing, or storage functions, Internet services,
27 electronic mail services, electronic message services, or other uses
28 of a computer, computer system, or computer network.

29 (5) “Computer system” means a device or collection of devices,
30 including support devices and excluding calculators that are not
31 programmable and capable of being used in conjunction with
32 external files, one or more of which contain computer programs,
33 electronic instructions, input data, and output data, that performs
34 functions including, but not limited to, logic, arithmetic, data
35 storage and retrieval, communication, and control. *A computer*
36 *system includes a vehicle operating system as that term is defined*
37 *in subdivision (c) of Section 487k.*

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

1 (7) “Public safety infrastructure computer system” means any
2 computer system, or part thereof, that is necessary for the health
3 and safety of the public including computer systems owned,
4 operated, or used by drinking water and wastewater treatment
5 facilities, hospitals, emergency service providers,
6 telecommunication companies, and gas and electric utility
7 companies.

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

13 (9) “Supporting documentation” includes, but is not limited to,
14 all information, in any form, pertaining to the design, construction,
15 classification, implementation, use, or modification of a computer,
16 computer system, computer network, computer program, or
17 computer software, which information is not generally available
18 to the public and is necessary for the operation of a computer,
19 computer system, computer network, computer program, or
20 computer software.

21 (10) “Injury” means any alteration, deletion, damage, or
22 destruction of a computer system, computer network, computer
23 program, or data caused by the access, or the denial of access to
24 legitimate users of a computer system, network, or program.

25 (11) “Victim expenditure” means any expenditure reasonably
26 and necessarily incurred by the owner or lessee to verify that a
27 computer system, computer network, computer program, or data
28 was or was not altered, deleted, damaged, or destroyed by the
29 access.

30 (12) “Computer contaminant” means any set of computer
31 instructions that are designed to modify, damage, destroy, record,
32 or transmit information within a computer, computer system, or
33 computer network without the intent or permission of the owner
34 of the information. They include, but are not limited to, a group
35 of computer instructions commonly called viruses or worms, that
36 are self-replicating or self-propagating and are designed to
37 contaminate other computer programs or computer data, consume
38 computer resources, modify, destroy, record, or transmit data, or
39 in some other fashion usurp the normal operation of the computer,
40 computer system, or computer network.

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

6 (14) “Electronic mail” means an electronic message or computer
7 file that is transmitted between two or more telecommunications
8 devices; computers; computer networks, regardless of whether the
9 network is a local, regional, or global network; or electronic devices
10 capable of receiving electronic messages, regardless of whether
11 the message is converted to hard copy format after receipt, viewed
12 upon transmission, or stored for later retrieval.

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

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

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

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

24 (1) Knowingly accesses and without permission alters, damages,
25 deletes, destroys, or otherwise uses any data, computer, computer
26 system, or computer network in order to either (A) devise or
27 execute any scheme or artifice to defraud, deceive, or extort, or
28 (B) wrongfully control or obtain money, property, or data.

29 (2) Knowingly accesses and without permission takes, copies,
30 or makes use of any data from a computer, computer system, or
31 computer network, or takes or copies any supporting
32 documentation, whether existing or residing internal or external
33 to a computer, computer system, or computer network.

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

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

1 (5) Knowingly and without permission disrupts or causes the
2 disruption of computer services or denies or causes the denial of
3 computer services to an authorized user of a computer, computer
4 system, or computer network.

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

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

10 (8) Knowingly introduces any computer contaminant into any
11 computer, computer system, or computer network.

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

17 (10) Knowingly and without permission disrupts or causes the
18 disruption of government computer services or denies or causes
19 the denial of government computer services to an authorized user
20 of a government computer, computer system, or computer network.

21 (11) Knowingly accesses and without permission adds, alters,
22 damages, deletes, or destroys any data, computer software, or
23 computer programs which reside or exist internal or external to a
24 public safety infrastructure computer system computer, computer
25 system, or computer network.

26 (12) Knowingly and without permission disrupts or causes the
27 disruption of public safety infrastructure computer system computer
28 services or denies or causes the denial of computer services to an
29 authorized user of a public safety infrastructure computer system
30 computer, computer system, or computer network.

31 (13) Knowingly and without permission provides or assists in
32 providing a means of accessing a computer, computer system, or
33 public safety infrastructure computer system computer, computer
34 system, or computer network in violation of this section.

35 (14) Knowingly introduces any computer contaminant into any
36 public safety infrastructure computer system computer, computer
37 system, or computer network.

38 (d) (1) Any person who violates any of the provisions of
39 paragraph (1), (2), (4), (5), (10), (11), or (12) of subdivision (c) is
40 punishable by a fine not exceeding ten thousand dollars (\$10,000),

1 or by imprisonment pursuant to subdivision (h) of Section 1170
2 for 16 months, or two or three years, or by both that fine and
3 imprisonment, or by a fine not exceeding five thousand dollars
4 (\$5,000), or by imprisonment in a county jail not exceeding one
5 year, or by both that fine and imprisonment.

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

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

13 (B) For any violation that results in a victim expenditure in an
14 amount greater than five thousand dollars (\$5,000) or in an injury,
15 or if the value of the computer services used exceeds nine hundred
16 fifty dollars (\$950), or for any second or subsequent violation, by
17 a fine not exceeding ten thousand dollars (\$10,000), or by
18 imprisonment pursuant to subdivision (h) of Section 1170 for 16
19 months, or two or three years, or by both that fine and
20 imprisonment, or by a fine not exceeding five thousand dollars
21 (\$5,000), or by imprisonment in a county jail not exceeding one
22 year, or by both that fine and imprisonment.

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

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

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

33 (C) For any violation that results in a victim expenditure in an
34 amount greater than five thousand dollars (\$5,000), by a fine not
35 exceeding ten thousand dollars (\$10,000), or by imprisonment
36 pursuant to subdivision (h) of Section 1170 for 16 months, or two
37 or three years, or by both that fine and imprisonment, or by a fine
38 not exceeding five thousand dollars (\$5,000), or by imprisonment
39 in a county jail not exceeding one year, or by both that fine and
40 imprisonment.

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

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

7 (B) For any violation that results in injury, or for a second or
8 subsequent violation, by a fine not exceeding ten thousand dollars
9 (\$10,000), or by imprisonment in a county jail not exceeding one
10 year, or by imprisonment pursuant to subdivision (h) of Section
11 1170, or by both that fine and imprisonment.

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

14 (A) For a first violation that does not result in injury, an
15 infraction punishable by a fine not exceeding one thousand dollars
16 (\$1,000).

17 (B) For any violation that results in injury, or for a second or
18 subsequent violation, by a fine not exceeding five thousand dollars
19 (\$5,000), or by imprisonment in a county jail not exceeding one
20 year, or by both that fine and imprisonment.

21 (e) (1) In addition to any other civil remedy available, the owner
22 or lessee of the computer, computer system, computer network,
23 computer program, or data who suffers damage or loss by reason
24 of a violation of any of the provisions of subdivision (c) may bring
25 a civil action against the violator for compensatory damages and
26 injunctive relief or other equitable relief. Compensatory damages
27 shall include any expenditure reasonably and necessarily incurred
28 by the owner or lessee to verify that a computer system, computer
29 network, computer program, or data was or was not altered,
30 damaged, or deleted by the access. For the purposes of actions
31 authorized by this subdivision, the conduct of an unemancipated
32 minor shall be imputed to the parent or legal guardian having
33 control or custody of the minor, pursuant to the provisions of
34 Section 1714.1 of the Civil Code.

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

37 (3) A community college, state university, or academic
38 institution accredited in this state is required to include
39 computer-related crimes as a specific violation of college or
40 university student conduct policies and regulations that may subject

1 a student to disciplinary sanctions up to and including dismissal
2 from the academic institution. This paragraph shall not apply to
3 the University of California unless the Board of Regents adopts a
4 resolution to that effect.

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

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

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

19 (g) Any computer, computer system, computer network, or any
20 software or data, owned by the defendant, that is used during the
21 commission of any public offense described in subdivision (c) or
22 any computer, owned by the defendant, which is used as a
23 repository for the storage of software or data illegally obtained in
24 violation of subdivision (c) shall be subject to forfeiture, as
25 specified in Section 502.01.

26 (h) (1) Subdivision (c) does not apply to punish any acts which
27 are committed by a person within the scope of his or her lawful
28 employment. For purposes of this section, a person acts within the
29 scope of his or her employment when he or she performs acts
30 which are reasonably necessary to the performance of his or her
31 work assignment.

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

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

1 (j) For purposes of bringing a civil or a criminal action under
2 this section, a person who causes, by any means, the access of a
3 computer, computer system, or computer network in one
4 jurisdiction from another jurisdiction is deemed to have personally
5 accessed the computer, computer system, or computer network in
6 each jurisdiction.

7 (k) In determining the terms and conditions applicable to a
8 person convicted of a violation of this section the court shall
9 consider the following:

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

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

16 *SEC. 4. No reimbursement is required by this act pursuant to*
17 *Section 6 of Article XIII B of the California Constitution because*
18 *the only costs that may be incurred by a local agency or school*
19 *district will be incurred because this act creates a new crime or*
20 *infraction, eliminates a crime or infraction, or changes the penalty*
21 *for a crime or infraction, within the meaning of Section 17556 of*
22 *the Government Code, or changes the definition of a crime within*
23 *the meaning of Section 6 of Article XIII B of the California*
24 *Constitution.*

25 ~~SECTION 1. Section 1708.5.5 is added to the Civil Code, to~~
26 ~~read:~~

27 ~~1708.5.5. Nonconsensual sexual intercourse is an act of sexual~~
28 ~~intercourse between an adult and a person who is not the spouse~~
29 ~~of the adult, if the person is a minor. For the purposes of this~~
30 ~~section, a “minor” is a person under 18 years of age and an “adult”~~
31 ~~is a person who is at least 18 years of age.~~