

AMENDED IN SENATE APRIL 15, 2015
AMENDED IN SENATE MARCH 17, 2015

SENATE BILL

No. 30

Introduced by Senator Gaines

December 1, 2014

An act to amend ~~Section~~ *Sections 215 and 502* of, and to add ~~Sections 487k and 487l~~ to, the Penal Code, relating to ~~theft~~: *carjacking*.

LEGISLATIVE COUNSEL'S DIGEST

SB 30, as amended, Gaines. ~~Theft: vehicles~~: *Carjacking*.

Under existing law, carjacking is the felonious taking of a motor vehicle in the possession of another from his or her person or immediate presence, or from the person or immediate presence of a passenger, against his or her will, and with intent either to permanently or temporarily deprive the person in possession of his or her possession, accomplished by means of force or fear. Carjacking is punishable by imprisonment in the state prison for 3, 5, or 9 years.

This bill would expand the methods by which carjacking can be accomplished to include remotely commandeering the vehicle through access of one or more of the vehicle's operating systems, as defined. This bill would make a conforming change to a related provision.

~~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.

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 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 (e) ~~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 vehicle~~
11 ~~operating system in immediate control of the vehicle to alter the~~
12 ~~vehicle’s path or course of travel.~~

13 *SECTION 1. Section 215 of the Penal Code is amended to*
14 *read:*

15 215. (a) “Carjacking” is the felonious taking of a motor vehicle
16 in the possession of another, from his or her person or immediate
17 presence, or from the person or immediate presence of a passenger
18 of the motor vehicle, against his or her will and with the intent to
19 either permanently or temporarily deprive the person in possession
20 of the motor vehicle of his or her possession, accomplished by
21 means of ~~force or fear.~~ *force, fear, or by remotely commandeering*
22 *the vehicle through access of one or more of a vehicle’s operating*
23 *systems.*

24 (b) Carjacking is punishable by imprisonment in the state prison
25 for a term of three, five, or nine years.

26 (c) This section shall not be construed to supersede or affect
27 Section 211. A person may be charged with a violation of this
28 section and Section 211. However, ~~no~~ *a defendant may shall not*
29 *be punished under this section and Section 211 for the same act*
30 *which constitutes a violation of both this section and Section 211.*

31 (d) *For purposes of this section, the following definitions apply;*

32 (1) *“Remotely commandeering a vehicle” means assuming*
33 *electronic control of the vehicle’s onboard navigation, propulsion,*
34 *braking, steering or global positioning systems, for the purpose*
35 *of manipulating the operator’s intended path or course of travel.*

36 (2) *“Vehicle operating system” means a device or collection of*
37 *devices, including support devices, installed in a vehicle, one or*
38 *more of which contain computer programs, electronic instructions,*
39 *input data, and output data, that performs functions including, but*
40 *not limited to, logic, arithmetic, data storage and retrieval,*

1 *communication, and control of the vehicle's steering, propulsion,*
2 *braking, onboard navigation, or global positioning systems.*

3 ~~SEC. 2. Section 4871 is added to the Penal Code, to read:~~

4 ~~4871. (a) A person who steals, takes, or carries away the vehicle~~
5 ~~of another that is of a value not exceeding nine hundred fifty dollars~~
6 ~~(\$950) by remotely commandeering the vehicle through access of~~
7 ~~a vehicle operating system without the consent of the owner or~~
8 ~~operator of the vehicle is guilty of petty theft.~~

9 ~~(b) For the purposes of this section, the term "vehicle" is limited~~
10 ~~to motorized vehicles.~~

11 ~~(c) For the purposes of this section, the term "vehicle operating~~
12 ~~system" means a device or collection of devices, including support~~
13 ~~devices, installed in a vehicle, one or more of which contain~~
14 ~~computer programs, electronic instructions, input data, and output~~
15 ~~data, that performs functions including, but not limited to, logic,~~
16 ~~arithmetic, data storage and retrieval, communication, and control~~
17 ~~of the vehicle's steering, propulsion, braking, onboard navigation,~~
18 ~~or global positioning systems.~~

19 ~~(d) For the purposes of this section, the term "access" includes~~
20 ~~transmission of navigational data that causes the operator or vehicle~~
21 ~~operating system in immediate control of the vehicle to alter the~~
22 ~~vehicle's path or course of travel.~~

23 ~~SEC. 3.~~

24 ~~SEC. 2. Section 502 of the Penal Code is amended to read:~~

25 ~~502. (a) It is the intent of the Legislature in enacting this~~
26 ~~section to expand the degree of protection afforded to individuals,~~
27 ~~businesses, and governmental agencies from tampering,~~
28 ~~interference, damage, and unauthorized access to lawfully created~~
29 ~~computer data and computer systems. The Legislature finds and~~
30 ~~declares that the proliferation of computer technology has resulted~~
31 ~~in a concomitant proliferation of computer crime and other forms~~
32 ~~of unauthorized access to computers, computer systems, and~~
33 ~~computer data.~~

34 ~~The Legislature further finds and declares that protection of the~~
35 ~~integrity of all types and forms of lawfully created computers,~~
36 ~~computer systems, and computer data is vital to the protection of~~
37 ~~the privacy of individuals as well as to the well-being of financial~~
38 ~~institutions, business concerns, governmental agencies, and others~~
39 ~~within this state that lawfully utilize those computers, computer~~
40 ~~systems, and data.~~

1 (b) For the purposes of this section, the following terms have
2 the following meanings:

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

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

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

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

20 (5) “Computer system” means a device or collection of devices,
21 including support devices and excluding calculators that are not
22 programmable and capable of being used in conjunction with
23 external files, one or more of which contain computer programs,
24 electronic instructions, input data, and output data, that performs
25 functions including, but not limited to, logic, arithmetic, data
26 storage and retrieval, communication, and control. A computer
27 system includes a vehicle operating system as that term is defined
28 in subdivision ~~(e)~~ of Section 487k *(d) of Section 215*.

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

32 (7) “Public safety infrastructure computer system” means any
33 computer system, or part thereof, that is necessary for the health
34 and safety of the public including computer systems owned,
35 operated, or used by drinking water and wastewater treatment
36 facilities, hospitals, emergency service providers,
37 telecommunication companies, and gas and electric utility
38 companies.

39 (8) “Data” means a representation of information, knowledge,
40 facts, concepts, computer software, computer programs or

1 instructions. Data may be in any form, in storage media, or as
2 stored in the memory of the computer or in transit or presented on
3 a display device.

4 (9) “Supporting documentation” includes, but is not limited to,
5 all information, in any form, pertaining to the design, construction,
6 classification, implementation, use, or modification of a computer,
7 computer system, computer network, computer program, or
8 computer software, which information is not generally available
9 to the public and is necessary for the operation of a computer,
10 computer system, computer network, computer program, or
11 computer software.

12 (10) “Injury” means any alteration, deletion, damage, or
13 destruction of a computer system, computer network, computer
14 program, or data caused by the access, or the denial of access to
15 legitimate users of a computer system, network, or program.

16 (11) “Victim expenditure” means any expenditure reasonably
17 and necessarily incurred by the owner or lessee to verify that a
18 computer system, computer network, computer program, or data
19 was or was not altered, deleted, damaged, or destroyed by the
20 access.

21 (12) “Computer contaminant” means any set of computer
22 instructions that are designed to modify, damage, destroy, record,
23 or transmit information within a computer, computer system, or
24 computer network without the intent or permission of the owner
25 of the information. They include, but are not limited to, a group
26 of computer instructions commonly called viruses or worms, that
27 are self-replicating or self-propagating and are designed to
28 contaminate other computer programs or computer data, consume
29 computer resources, modify, destroy, record, or transmit data, or
30 in some other fashion usurp the normal operation of the computer,
31 computer system, or computer network.

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

37 (14) “Electronic mail” means an electronic message or computer
38 file that is transmitted between two or more telecommunications
39 devices; computers; computer networks, regardless of whether the
40 network is a local, regional, or global network; or electronic devices

1 capable or receiving electronic messages, regardless of whether
2 the message is converted to hard copy format after receipt, viewed
3 upon transmission, or stored for later retrieval.

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

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

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

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

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

20 (2) Knowingly accesses and without permission takes, copies,
21 or makes use of any data from a computer, computer system, or
22 computer network, or takes or copies any supporting
23 documentation, whether existing or residing internal or external
24 to a computer, computer system, or computer network.

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

27 (4) Knowingly accesses and without permission adds, alters,
28 damages, deletes, or destroys any data, computer software, or
29 computer programs which reside or exist internal or external to a
30 computer, computer system, or computer network.

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

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

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

1 (8) Knowingly introduces any computer contaminant into any
2 computer, computer system, or computer network.

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

8 (10) Knowingly and without permission disrupts or causes the
9 disruption of government computer services or denies or causes
10 the denial of government computer services to an authorized user
11 of a government computer, computer system, or computer network.

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

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

22 (13) Knowingly and without permission provides or assists in
23 providing a means of accessing a computer, computer system, or
24 public safety infrastructure computer system computer, computer
25 system, or computer network in violation of this section.

26 (14) Knowingly introduces any computer contaminant into any
27 public safety infrastructure computer system computer, computer
28 system, or computer network.

29 (d) (1) Any person who violates any of the provisions of
30 paragraph (1), (2), (4), (5), (10), (11), or (12) of subdivision (c) is
31 punishable by a fine not exceeding ten thousand dollars (\$10,000),
32 or by imprisonment pursuant to subdivision (h) of Section 1170
33 for 16 months, or two or three years, or by both that fine and
34 imprisonment, or by a fine not exceeding five thousand dollars
35 (\$5,000), or by imprisonment in a county jail not exceeding one
36 year, or by both that fine and imprisonment.

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

39 (A) For the first violation that does not result in injury, and
40 where the value of the computer services used does not exceed

1 nine hundred fifty dollars (\$950), by a fine not exceeding five
2 thousand dollars (\$5,000), or by imprisonment in a county jail not
3 exceeding one year, or by both that fine and imprisonment.

4 (B) For any violation that results in a victim expenditure in an
5 amount greater than five thousand dollars (\$5,000) or in an injury,
6 or if the value of the computer services used exceeds nine hundred
7 fifty dollars (\$950), or for any second or subsequent violation, by
8 a fine not exceeding ten thousand dollars (\$10,000), or by
9 imprisonment pursuant to subdivision (h) of Section 1170 for 16
10 months, or two or three years, or by both that fine and
11 imprisonment, or by a fine not exceeding five thousand dollars
12 (\$5,000), or by imprisonment in a county jail not exceeding one
13 year, or by both that fine and imprisonment.

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

16 (A) For a first violation that does not result in injury, an
17 infraction punishable by a fine not exceeding one thousand dollars
18 (\$1,000).

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

24 (C) For any violation that results in a victim expenditure in an
25 amount greater than five thousand dollars (\$5,000), by a fine not
26 exceeding ten thousand dollars (\$10,000), or by imprisonment
27 pursuant to subdivision (h) of Section 1170 for 16 months, or two
28 or three years, or by both that fine and imprisonment, or by a fine
29 not exceeding five thousand dollars (\$5,000), or by imprisonment
30 in a county jail not exceeding one year, or by both that fine and
31 imprisonment.

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

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

38 (B) For any violation that results in injury, or for a second or
39 subsequent violation, by a fine not exceeding ten thousand dollars
40 (\$10,000), or by imprisonment in a county jail not exceeding one

1 year, or by imprisonment pursuant to subdivision (h) of Section
2 1170, or by both that fine and imprisonment.

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

5 (A) For a first violation that does not result in injury, an
6 infraction punishable by a fine not exceeding one thousand dollars
7 (\$1,000).

8 (B) For any violation that results in injury, or for a second or
9 subsequent violation, by a fine not exceeding five thousand dollars
10 (\$5,000), or by imprisonment in a county jail not exceeding one
11 year, or by both that fine and imprisonment.

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

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

28 (3) A community college, state university, or academic
29 institution accredited in this state is required to include
30 computer-related crimes as a specific violation of college or
31 university student conduct policies and regulations that may subject
32 a student to disciplinary sanctions up to and including dismissal
33 from the academic institution. This paragraph shall not apply to
34 the University of California unless the Board of Regents adopts a
35 resolution to that effect.

36 (4) In any action brought pursuant to this subdivision for a
37 willful violation of the provisions of subdivision (c), where it is
38 proved by clear and convincing evidence that a defendant has been
39 guilty of oppression, fraud, or malice as defined in subdivision (c)

1 of Section 3294 of the Civil Code, the court may additionally award
2 punitive or exemplary damages.

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

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

11 (g) Any computer, computer system, computer network, or any
12 software or data, owned by the defendant, that is used during the
13 commission of any public offense described in subdivision (c) or
14 any computer, owned by the defendant, which is used as a
15 repository for the storage of software or data illegally obtained in
16 violation of subdivision (c) shall be subject to forfeiture, as
17 specified in Section 502.01.

18 (h) (1) Subdivision (c) does not apply to punish any acts which
19 are committed by a person within the scope of his or her lawful
20 employment. For purposes of this section, a person acts within the
21 scope of his or her employment when he or she performs acts
22 which are reasonably necessary to the performance of his or her
23 work assignment.

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

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

33 (j) For purposes of bringing a civil or a criminal action under
34 this section, a person who causes, by any means, the access of a
35 computer, computer system, or computer network in one
36 jurisdiction from another jurisdiction is deemed to have personally
37 accessed the computer, computer system, or computer network in
38 each jurisdiction.

1 (k) In determining the terms and conditions applicable to a
2 person convicted of a violation of this section the court shall
3 consider the following:

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

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

10 ~~SEC. 4.~~

11 *SEC. 3.* No reimbursement is required by this act pursuant to
12 Section 6 of Article XIII B of the California Constitution because
13 the only costs that may be incurred by a local agency or school
14 district will be incurred because this act creates a new crime or
15 infraction, eliminates a crime or infraction, or changes the penalty
16 for a crime or infraction, within the meaning of Section 17556 of
17 the Government Code, or changes the definition of a crime within
18 the meaning of Section 6 of Article XIII B of the California
19 Constitution.