

Introduced by Senator CannellaFebruary 27, 2015

An act to amend Sections 312.3, 502.01, and 647 of the Penal Code, relating to disorderly conduct.

LEGISLATIVE COUNSEL'S DIGEST

SB 676, as introduced, Cannella. Disorderly conduct: invasion of privacy.

Existing law provides that a person who photographs or records by any means the image of the intimate body part or parts of another identifiable person, under circumstances where the parties agree or understand that the image shall remain private, and the person subsequently distributes the image taken, with the intent to cause serious emotional distress, and the depicted person suffers serious emotional distress, is guilty of disorderly conduct, a misdemeanor. Existing law also includes other offenses involving invasion of privacy, including, for example, a person who looks through a hole or opening, into, or otherwise views, by means of any instrumentality, the interior of a bedroom, bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which the occupant has a reasonable expectation of privacy, with the intent to invade the privacy of a person or persons inside.

This bill would provide that a person who intentionally distributes another person's personal identifying information associated with an image of an intimate body part of that other person, as defined, without the consent of the other person, is guilty of disorderly conduct.

By expanding the definition of an existing crime, this bill would impose a state-mandated local program.

Under existing law, matter that depicts a person under 18 years of age personally engaging in or personally simulating sexual conduct, as defined, and that is in the possession of any city, county, city and county, or state official or agency is subject to forfeiture pursuant to a petition for forfeiture brought in the county in which the matter is located. Existing law provides for forfeiture by a defendant of illegal telecommunications equipment, or a computer, computer system, or computer network, and any software or data that was used in committing specified crimes, including depiction of a person under 18 years of age personally engaging in or personally simulating sexual conduct.

This bill would apply those provisions to the new provisions of disorderly conduct described above, and to the existing provisions of disorderly conduct related to invasion of privacy, as provided.

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 312.3 of the Penal Code is amended to
- 2 read:
- 3 312.3. (a) Matter that depicts a person under the age of 18
- 4 years personally engaging in or personally simulating sexual
- 5 conduct as defined in Section 311.4, *or that is obtained or*
- 6 *distributed in violation of subdivision (j) of Section 647* and that
- 7 is in the possession of any city, county, city and county, or state
- 8 official or agency is subject to forfeiture pursuant to this section.
- 9 (b) An action to forfeit matter described in subdivision (a) may
- 10 be brought by the Attorney General, the district attorney, county
- 11 counsel, or the city attorney. Proceedings shall be initiated by a
- 12 petition of forfeiture filed in the superior court of the county in
- 13 which the matter is located.
- 14 (c) The prosecuting agency shall make service of process of a
- 15 notice regarding that petition upon every individual who may have
- 16 a property interest in the alleged proceeds. The notice shall state
- 17 that any interested party may file a verified claim with the superior

1 court stating the amount of their claimed interest and an affirmation
2 or denial of the prosecuting agency’s allegation. If the notice cannot
3 be given by registered mail or personal delivery, the notice shall
4 be published for at least three successive weeks in a newspaper of
5 general circulation in the county where the property is located. All
6 notices shall set forth the time within which a claim of interest in
7 the property seized is required to be filed.

8 (d) (1) Any person claiming an interest in the property or
9 proceeds may, at any time within 30 days from the date of the first
10 publication of the notice of seizure, or within 30 days after receipt
11 of actual notice, file with the superior court of the county in which
12 the action is pending a verified claim stating his or her interest in
13 the property or proceeds. A verified copy of the claim shall be
14 given by the claimant to the Attorney General or district attorney,
15 county counsel, or city attorney, as appropriate.

16 (2) If, at the end of the time set forth in paragraph (1), an
17 interested person has not filed a claim, the court, upon motion,
18 shall declare that the person has defaulted upon his or her alleged
19 interest, and it shall be subject to forfeiture upon proof of
20 compliance with subdivision (c).

21 (e) The burden is on the petitioner to prove beyond a reasonable
22 doubt that matter is subject to forfeiture pursuant to this section.

23 (f) It is not necessary to seek or obtain a criminal conviction
24 prior to the entry of an order for the destruction of matter pursuant
25 to this section. Any matter described in subdivision (a) that is in
26 the possession of any city, county, city and county, or state official
27 or agency, including found property, or property obtained as the
28 result of a case in which no trial was had or that has been disposed
29 of by way of dismissal or otherwise than by way of conviction
30 may be ordered destroyed.

31 (g) A court order for destruction of matter described in
32 subdivision (a) may be carried out by a police or sheriff’s
33 department or by the Department of Justice. The court order shall
34 specify the agency responsible for the destruction.

35 (h) As used in this section, “matter” means any book, magazine,
36 newspaper, or other printed or written material or any picture,
37 drawing, photograph, motion picture, or other pictorial
38 representation, or any statue or other figure, or any recording,
39 transcription or mechanical, chemical or electrical reproduction,
40 or any other articles, equipment, machines, or materials. “Matter”

1 also means any representation of information, data, or image,
2 including, but not limited to, any film, filmstrip, photograph,
3 negative, slide, photocopy, videotape, video laser disc, computer
4 hardware, computer software, computer floppy disc, data storage
5 media, CD-ROM, or computer-generated equipment or any other
6 computer-generated image that contains or incorporates in any
7 manner any film or filmstrip.

8 (i) This section does not apply to a depiction of a legally
9 emancipated minor or to lawful conduct between spouses if one
10 or both are under the age of 18.

11 (j) It is a defense in any forfeiture proceeding that the matter
12 seized was lawfully possessed in aid of legitimate scientific or
13 educational purposes.

14 SEC. 2. Section 502.01 of the Penal Code is amended to read:

15 502.01. (a) As used in this section:

16 (1) "Property subject to forfeiture" means any property of the
17 defendant that is illegal telecommunications equipment as defined
18 in subdivision (g) of Section 502.8, or a computer, computer
19 system, or computer network, and any software or data residing
20 thereon, if the telecommunications device, computer, computer
21 system, or computer network was used in committing a violation
22 of, or conspiracy to commit a violation of, subdivision (b) of
23 Section 272, Section 288, 288.2, 311.1, 311.2, 311.3, 311.4, 311.5,
24 311.10, 311.11, 422, 470, 470a, 472, 475, 476, 480, 483.5, 484g,
25 or subdivision (a), (b), or (d) of Section 484e, subdivision (a) of
26 Section 484f, subdivision (b) or (c) of Section 484i, subdivision
27 (c) of Section 502, or Section 502.7, 502.8, 529, 529a, or 530.5,
28 537e, 593d, 593e, ~~or~~ 646.9, *or subdivision (j) of Section 647*, or
29 was used as a repository for the storage of software or data obtained
30 in violation of those provisions. Forfeiture shall not be available
31 for any property used solely in the commission of an infraction.
32 If the defendant is a minor, it also includes property of the parent
33 or guardian of the defendant.

34 (2) "Sentencing court" means the court sentencing a person
35 found guilty of violating or conspiring to commit a violation of
36 subdivision (b) of Section 272, Section 288, 288.2, 311.1, 311.2,
37 311.3, 311.4, 311.5, 311.10, 311.11, 422, 470, 470a, 472, 475,
38 476, 480, 483.5, 484g, or subdivision (a), (b), or (d) of Section
39 484e, subdivision (d) of Section 484e, subdivision (a) of Section
40 484f, subdivision (b) or (c) of Section 484i, subdivision (c) of

1 Section 502, or Section 502.7, 502.8, 529, 529a, 530.5, 537e, 593d,
2 593e, ~~or~~ 646.9, or subdivision (j) of Section 647, or, in the case of
3 a minor, found to be a person described in Section 602 of the
4 Welfare and Institutions Code because of a violation of those
5 provisions, the juvenile court.

6 (3) “Interest” means any property interest in the property subject
7 to forfeiture.

8 (4) “Security interest” means an interest that is a lien, mortgage,
9 security interest, or interest under a conditional sales contract.

10 (5) “Value” has the following meanings:

11 (A) When counterfeit items of computer software are
12 manufactured or possessed for sale, the “value” of those items
13 shall be equivalent to the retail price or fair market price of the
14 true items that are counterfeited.

15 (B) When counterfeited but unassembled components of
16 computer software packages are recovered, including, but not
17 limited to, counterfeited computer diskettes, instruction manuals,
18 or licensing envelopes, the “value” of those components of
19 computer software packages shall be equivalent to the retail price
20 or fair market price of the number of completed computer software
21 packages that could have been made from those components.

22 (b) The sentencing court shall, upon petition by the prosecuting
23 attorney, at any time following sentencing, or by agreement of all
24 parties, at the time of sentencing, conduct a hearing to determine
25 whether any property or property interest is subject to forfeiture
26 under this section. At the forfeiture hearing, the prosecuting
27 attorney shall have the burden of establishing, by a preponderance
28 of the evidence, that the property or property interests are subject
29 to forfeiture. The prosecuting attorney may retain seized property
30 that may be subject to forfeiture until the sentencing hearing.

31 (c) (1) Prior to the commencement of a forfeiture proceeding,
32 the law enforcement agency seizing the property subject to
33 forfeiture shall make an investigation as to any person other than
34 the defendant who may have an interest in it. At least 30 days
35 before the hearing to determine whether the property should be
36 forfeited, the prosecuting agency shall send notice of the hearing
37 to any person who may have an interest in the property that arose
38 before the seizure.

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1 (2) A person claiming an interest in the property shall file a
2 motion for the redemption of that interest at least 10 days before
3 the hearing on forfeiture, and shall send a copy of the motion to
4 the prosecuting agency and to the probation department.

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6 (3) *If* a motion to redeem an interest has been filed, the
7 sentencing court shall hold a hearing to identify all persons who
8 possess valid interests in the property. No person shall hold a valid
9 interest in the property if, by a preponderance of the evidence, the
10 prosecuting agency shows that the person knew or should have
11 known that the property was being used in violation of, or
12 conspiracy to commit a violation of, subdivision (b) of Section
13 272, Section 288, 288.2, 311.1, 311.2, 311.3, 311.4, 311.5, 311.10,
14 311.11, 470, 470a, 472, 475, 476, 480, 483.5, 484g, or subdivision
15 (a), (b), or (d) of Section 484e, subdivision (a) of Section 484f,
16 subdivision (b) or (c) of Section 484i, subdivision (c) of Section
17 502, or Section 502.7, 502.8, 529, 529a, 530.5, 537e, 593d, 593e,
18 ~~or~~ 646.9, *or subdivision (j) of Section 647*, and that the person did
19 not take reasonable steps to prevent that use, or if the interest is a
20 security interest, the person knew or should have known at the
21 time that the security interest was created that the property would
22 be used for a violation.

23 (d) If the sentencing court finds that a person holds a valid
24 interest in the property, the following provisions shall apply:

25 (1) The court shall determine the value of the property.

26 (2) The court shall determine the value of each valid interest in
27 the property.

28 (3) If the value of the property is greater than the value of the
29 interest, the holder of the interest shall be entitled to ownership of
30 the property upon paying the court the difference between the
31 value of the property and the value of the valid interest.

32 If the holder of the interest declines to pay the amount determined
33 under paragraph (2), the court may order the property sold and
34 designate the prosecutor or any other agency to sell the property.
35 The designated agency shall be entitled to seize the property and
36 the holder of the interest shall forward any documentation
37 underlying the interest, including any ownership certificates for
38 that property, to the designated agency. The designated agency
39 shall sell the property and pay the owner of the interest the
40 proceeds, up to the value of that interest.

1 (4) If the value of the property is less than the value of the
2 interest, the designated agency shall sell the property and pay the
3 owner of the interest the proceeds, up to the value of that interest.

4 (e) If the defendant was a minor at the time of the offense, this
5 subdivision shall apply to property subject to forfeiture that is the
6 property of the parent or guardian of the minor.

7 (1) The prosecuting agency shall notify the parent or guardian
8 of the forfeiture hearing at least 30 days before the date set for the
9 hearing.

10 (2) The computer or telecommunications device shall not be
11 subject to forfeiture if the parent or guardian files a signed
12 statement with the court at least 10 days before the date set for the
13 hearing that the minor shall not have access to any computer or
14 telecommunications device owned by the parent or guardian for
15 two years after the date on which the minor is sentenced.

16 (3) If the minor is convicted of a violation of Section 288, 288.2,
17 311.1, 311.2, 311.3, 311.4, 311.5, 311.10, 311.11, 470, 470a, 472,
18 476, 480, or subdivision (b) of Section 484e, subdivision (d) of
19 Section 484e, subdivision (a) of Section 484f, subdivision (b) of
20 Section 484i, subdivision (c) of Section 502, or Section 502.7,
21 502.8, 529, 529a, ~~or~~ 530.5, or *subdivision (j) of Section 647*, within
22 two years after the date on which the minor is sentenced, and the
23 violation involves a computer or telecommunications device owned
24 by the parent or guardian, the original property subject to forfeiture,
25 and the property involved in the new offense, shall be subject to
26 forfeiture notwithstanding paragraph (2).

27 (4) Notwithstanding paragraph (1), (2), or (3), or any other
28 provision of this chapter, if a minor's parent or guardian makes
29 full restitution to the victim of a crime enumerated in this chapter
30 in an amount or manner determined by the court, the forfeiture
31 provisions of this chapter do not apply to the property of that parent
32 or guardian if the property was located in the family's primary
33 residence during the commission of the crime.

34 (f) Notwithstanding any other provision of this chapter, the court
35 may exercise its discretion to deny forfeiture where the court finds
36 that the convicted defendant, or minor adjudicated to come within
37 the jurisdiction of the juvenile court, is not likely to use the
38 property otherwise subject to forfeiture for future illegal acts.

39 (g) If the defendant is found to have the only valid interest in
40 the property subject to forfeiture, it shall be distributed as follows:

1 (1) First, to the victim, if the victim elects to take the property
2 as full or partial restitution for injury, victim expenditures, or
3 compensatory damages, as defined in paragraph (1) of subdivision
4 (e) of Section 502. If the victim elects to receive the property under
5 this paragraph, the value of the property shall be determined by
6 the court and that amount shall be credited against the restitution
7 owed by the defendant. The victim shall not be penalized for
8 electing not to accept the forfeited property in lieu of full or partial
9 restitution.

10 (2) Second, at the discretion of the court, to one or more of the
11 following agencies or entities:

12 (A) The prosecuting agency.

13 (B) The public entity of which the prosecuting agency is a part.

14 (C) The public entity whose officers or employees conducted
15 the investigation resulting in forfeiture.

16 (D) Other state and local public entities, including school
17 districts.

18 (E) Nonprofit charitable organizations.

19 (h) If the property is to be sold, the court may designate the
20 prosecuting agency or any other agency to sell the property at
21 auction. The proceeds of the sale shall be distributed by the court
22 as follows:

23 (1) To the bona fide or innocent purchaser or encumbrancer,
24 conditional sales vendor, or mortgagee of the property up to the
25 amount of his or her interest in the property, if the court orders a
26 distribution to that person.

27 (2) The balance, if any, to be retained by the court, subject to
28 the provisions for distribution under subdivision (g).

29 SEC. 3. Section 647 of the Penal Code is amended to read:

30 647. Except as provided in subdivision (l), every person who
31 commits any of the following acts is guilty of disorderly conduct,
32 a misdemeanor:

33 (a) Who solicits anyone to engage in or who engages in lewd
34 or dissolute conduct in any public place or in any place open to
35 the public or exposed to public view.

36 (b) Who solicits or who agrees to engage in or who engages in
37 any act of prostitution. A person agrees to engage in an act of
38 prostitution when, with specific intent to so engage, he or she
39 manifests an acceptance of an offer or solicitation to so engage,
40 regardless of whether the offer or solicitation was made by a person

1 who also possessed the specific intent to engage in prostitution.
2 No agreement to engage in an act of prostitution shall constitute
3 a violation of this subdivision unless some act, in addition to the
4 agreement, is done within this state in furtherance of the
5 commission of an act of prostitution by the person agreeing to
6 engage in that act. As used in this subdivision, “prostitution”
7 includes any lewd act between persons for money or other
8 consideration.

9 (c) Who accosts other persons in any public place or in any
10 place open to the public for the purpose of begging or soliciting
11 alms.

12 (d) Who loiters in or about any toilet open to the public for the
13 purpose of engaging in or soliciting any lewd or lascivious or any
14 unlawful act.

15 (e) Who lodges in any building, structure, vehicle, or place,
16 whether public or private, without the permission of the owner or
17 person entitled to the possession or in control of it.

18 (f) Who is found in any public place under the influence of
19 intoxicating liquor, any drug, controlled substance, toluene, or any
20 combination of any intoxicating liquor, drug, controlled substance,
21 or toluene, in a condition that he or she is unable to exercise care
22 for his or her own safety or the safety of others, or by reason of
23 his or her being under the influence of intoxicating liquor, any
24 drug, controlled substance, toluene, or any combination of any
25 intoxicating liquor, drug, or toluene, interferes with or obstructs
26 or prevents the free use of any street, sidewalk, or other public
27 way.

28 (g) When a person has violated subdivision (f), a peace officer,
29 if he or she is reasonably able to do so, shall place the person, or
30 cause him or her to be placed, in civil protective custody. The
31 person shall be taken to a facility, designated pursuant to Section
32 5170 of the Welfare and Institutions Code, for the 72-hour
33 treatment and evaluation of inebriates. A peace officer may place
34 a person in civil protective custody with that kind and degree of
35 force which would be lawful were he or she effecting an arrest for
36 a misdemeanor without a warrant. A person who has been placed
37 in civil protective custody shall not thereafter be subject to any
38 criminal prosecution or juvenile court proceeding based on the
39 facts giving rise to this placement. This subdivision shall not apply
40 to the following persons:

1 (1) Any person who is under the influence of any drug, or under
2 the combined influence of intoxicating liquor and any drug.

3 (2) Any person who a peace officer has probable cause to believe
4 has committed any felony, or who has committed any misdemeanor
5 in addition to subdivision (f).

6 (3) Any person who a peace officer in good faith believes will
7 attempt escape or will be unreasonably difficult for medical
8 personnel to control.

9 (h) Who loiters, prowls, or wanders upon the private property
10 of another, at any time, without visible or lawful business with the
11 owner or occupant. As used in this subdivision, “loiter” means to
12 delay or linger without a lawful purpose for being on the property
13 and for the purpose of committing a crime as opportunity may be
14 discovered.

15 (i) Who, while loitering, prowling, or wandering upon the private
16 property of another, at any time, peeks in the door or window of
17 any inhabited building or structure, without visible or lawful
18 business with the owner or occupant.

19 (j) (1) Any person who looks through a hole or opening, into,
20 or otherwise views, by means of any instrumentality, including,
21 but not limited to, a periscope, telescope, binoculars, camera,
22 motion picture camera, camcorder, or mobile phone, the interior
23 of a bedroom, bathroom, changing room, fitting room, dressing
24 room, or tanning booth, or the interior of any other area in which
25 the occupant has a reasonable expectation of privacy, with the
26 intent to invade the privacy of a person or persons inside. This
27 subdivision shall not apply to those areas of a private business
28 used to count currency or other negotiable instruments.

29 (2) Any person who uses a concealed camcorder, motion picture
30 camera, or photographic camera of any type, to secretly videotape,
31 film, photograph, or record by electronic means, another,
32 identifiable person under or through the clothing being worn by
33 that other person, for the purpose of viewing the body of, or the
34 undergarments worn by, that other person, without the consent or
35 knowledge of that other person, with the intent to arouse, appeal
36 to, or gratify the lust, passions, or sexual desires of that person and
37 invade the privacy of that other person, under circumstances in
38 which the other person has a reasonable expectation of privacy.

39 (3) (A) Any person who uses a concealed camcorder, motion
40 picture camera, or photographic camera of any type, to secretly

1 videotape, film, photograph, or record by electronic means, another,
2 identifiable person who may be in a state of full or partial undress,
3 for the purpose of viewing the body of, or the undergarments worn
4 by, that other person, without the consent or knowledge of that
5 other person, in the interior of a bedroom, bathroom, changing
6 room, fitting room, dressing room, or tanning booth, or the interior
7 of any other area in which that other person has a reasonable
8 expectation of privacy, with the intent to invade the privacy of that
9 other person.

10 (B) Neither of the following is a defense to the crime specified
11 in this paragraph:

12 (i) The defendant was a cohabitant, landlord, tenant, cotenant,
13 employer, employee, or business partner or associate of the victim,
14 or an agent of any of these.

15 (ii) The victim was not in a state of full or partial undress.

16 (4) (A) Any person who intentionally distributes the image of
17 the intimate body part or parts of another identifiable person, or
18 an image of the person depicted engaged in an act of sexual
19 intercourse, sodomy, oral copulation, sexual penetration, or an
20 image of masturbation by the person depicted or in which the
21 person depicted participates, under circumstances in which the
22 persons agree or understand that the image shall remain private,
23 the person distributing the image knows or should know that
24 distribution of the image will cause serious emotional distress, and
25 the person depicted suffers that distress.

26 (B) A person intentionally distributes an image described in
27 subparagraph (A) when he or she personally distributes the image,
28 or arranges, specifically requests, or intentionally causes another
29 person to distribute that image.

30 (C) As used in this paragraph, “intimate body part” means any
31 portion of the genitals, the anus and in the case of a female, also
32 includes any portion of the breasts below the top of the areola, that
33 is either uncovered or clearly visible through clothing.

34 (D) It shall not be a violation of this paragraph to distribute an
35 image described in subparagraph (A) if any of the following
36 applies:

37 (i) The distribution is made in the course of reporting an
38 unlawful activity.

39 (ii) The distribution is made in compliance with a subpoena or
40 other court order for use in a legal proceeding.

1 (iii) The distribution is made in the course of a lawful public
2 proceeding.

3 (5) (A) *A person who intentionally distributes another person's*
4 *personal identifying information associated with an image of an*
5 *intimate body part of that other person without the consent of the*
6 *other person.*

7 (B) *As used in this paragraph, "personal identifying*
8 *information" has the same meaning as defined in Section 530.55.*

9 (C) *As used in this paragraph, "intimate body part" has the*
10 *same meaning as provided in subparagraph (C) of paragraph (4).*

11 (D) *It is not a violation of this paragraph to distribute*
12 *information associated with an image as described in*
13 *subparagraph (A) if any of the following apply:*

14 (i) *The distribution is made in the course of reporting an*
15 *unlawful activity.*

16 (ii) *The distribution is made in compliance with a subpoena or*
17 *other court order for use in a legal proceeding.*

18 (iii) *The distribution is made in the course of a lawful public*
19 *proceeding.*

20 (iv) *The distribution is the republication of otherwise lawful*
21 *public material.*

22 ~~(5)~~

23 (6) This subdivision shall not preclude punishment under any
24 section of law providing for greater punishment.

25 (k) (1) In any accusatory pleading charging a violation of
26 subdivision (b), if the defendant has been once previously convicted
27 of a violation of that subdivision, the previous conviction shall be
28 charged in the accusatory pleading. If the previous conviction is
29 found to be true by the jury, upon a jury trial, or by the court, upon
30 a court trial, or is admitted by the defendant, the defendant shall
31 be imprisoned in a county jail for a period of not less than 45 days
32 and shall not be eligible for release upon completion of sentence,
33 on probation, on parole, on work furlough or work release, or on
34 any other basis until he or she has served a period of not less than
35 45 days in a county jail. In all cases in which probation is granted,
36 the court shall require as a condition thereof that the person be
37 confined in a county jail for at least 45 days. In no event does the
38 court have the power to absolve a person who violates this
39 subdivision from the obligation of spending at least 45 days in
40 confinement in a county jail.

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2 (2) *In* any accusatory pleading charging a violation of
3 subdivision (b), if the defendant has been previously convicted
4 two or more times of a violation of that subdivision, each of these
5 previous convictions shall be charged in the accusatory pleading.
6 If two or more of these previous convictions are found to be true
7 by the jury, upon a jury trial, or by the court, upon a court trial, or
8 are admitted by the defendant, the defendant shall be imprisoned
9 in a county jail for a period of not less than 90 days and shall not
10 be eligible for release upon completion of sentence, on probation,
11 on parole, on work furlough or work release, or on any other basis
12 until he or she has served a period of not less than 90 days in a
13 county jail. In all cases in which probation is granted, the court
14 shall require as a condition thereof that the person be confined in
15 a county jail for at least 90 days. In no event does the court have
16 the power to absolve a person who violates this subdivision from
17 the obligation of spending at least 90 days in confinement in a
18 county jail.

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20 (3) *In* addition to any punishment prescribed by this section, a
21 court may suspend, for not more than 30 days, the privilege of the
22 person to operate a motor vehicle pursuant to Section 13201.5 of
23 the Vehicle Code for any violation of subdivision (b) that was
24 committed within 1,000 feet of a private residence and with the
25 use of a vehicle. In lieu of the suspension, the court may order a
26 person's privilege to operate a motor vehicle restricted, for not
27 more than six months, to necessary travel to and from the person's
28 place of employment or education. If driving a motor vehicle is
29 necessary to perform the duties of the person's employment, the
30 court may also allow the person to drive in that person's scope of
31 employment.

32 (l) (1) A second or subsequent violation of subdivision (j) is
33 punishable by imprisonment in a county jail not exceeding one
34 year, or by a fine not exceeding two thousand dollars (\$2,000), or
35 by both that fine and imprisonment.

36 (2) If the victim of a violation of subdivision (j) was a minor at
37 the time of the offense, the violation is punishable by imprisonment
38 in a county jail not exceeding one year, or by a fine not exceeding
39 two thousand dollars (\$2,000), or by both that fine and
40 imprisonment.

1 (m) (1) If a crime is committed in violation of subdivision (b)
2 and the person who was solicited was a minor at the time of the
3 offense, and if the defendant knew or should have known that the
4 person who was solicited was a minor at the time of the offense,
5 the violation is punishable by imprisonment in a county jail for
6 not less than two days and not more than one year, or by a fine not
7 exceeding ten thousand dollars (\$10,000), or by both that fine and
8 imprisonment.

9 (2) The court may, in unusual cases, when the interests of justice
10 are best served, reduce or eliminate the mandatory two days of
11 imprisonment in a county jail required by this subdivision. If the
12 court reduces or eliminates the mandatory two days' imprisonment,
13 the court shall specify the reason on the record.

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