

ASSEMBLY BILL

No. 2351

Introduced by Assembly Member Hertzberg

February 20, 1998

An act to amend Section 646.9, and to add Sections 539.5, 13515.55, and 13980 to, the Penal Code relating to computer crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 2351, as introduced, Hertzberg. Computer crime.

(1) Existing law provides that a person who willfully, maliciously, and repeatedly follows or harasses another person and makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family, is guilty of the crime of stalking.

This bill would expressly make those activities undertaken through the use of computer communications subject to the misdemeanor penalties thereof. By expanding the scope of a crime, this bill would impose a state-mandated local program.

(2) Existing law requires specified categories of law enforcement officers to meet training standards pursuant to courses of training certified by the Peace Officers Standards and Training (POST) program.

This bill would require every city police officer or deputy sheriff at a supervisory level and below to complete a high technology crimes and computer seizure training course certified by POST. By imposing additional duties on local agencies, it would impose a state-mandated local program.

(3) Existing law requires the Office of Criminal Justice Planning, among other things, to develop the comprehensive statewide plan for the improvement of criminal justice and delinquency prevention activity throughout the state, and to develop comprehensive, unified, and orderly procedures to ensure that all local plans and all state and local projects are in accord with the comprehensive state plan, and that all applications for grants are processed efficiently.

This bill would require the office to conduct a feasibility study with respect to a state-operated center on computer forensics for the purpose of collecting, compiling, and analyzing information, including evidence seized in connection with criminal proceedings, in computer formats to provide assistance to state and local law enforcement agencies in the investigation and prosecution of crimes involving computer technology, and to report its findings and conclusions to the Legislature on or before June 30, 2000.

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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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 539.5 is added to the Penal Code,
2 to read:



1 539.5. For purposes of this chapter, a false personation
2 includes that attempted or accomplished by use of
3 computer technology.

4 SEC. 2. Section 646.9 of the Penal Code is amended to
5 read:

6 646.9. (a) Any person who willfully, maliciously, and
7 repeatedly follows or harasses another person and who
8 makes a credible threat with the intent to place that
9 person in reasonable fear for his or her safety, or the safety
10 of his or her immediate family, *including that undertaken*
11 *through the use of computer communications*, is guilty of
12 the crime of stalking, punishable by imprisonment in a
13 county jail for not more than one year or by a fine of not
14 more than one thousand dollars (\$1,000), or by both that
15 fine and imprisonment, or by imprisonment in the state
16 prison.

17 (b) Any person who violates subdivision (a) when
18 there is a temporary restraining order, injunction, or any
19 other court order in effect prohibiting the behavior
20 described in subdivision (a) against the same party, shall
21 be punished by imprisonment in the state prison for two,
22 three, or four years.

23 (c) Every person who, having been convicted of a
24 felony under this section, commits a second or subsequent
25 violation of this section shall be punished by
26 imprisonment in the state prison for two, three, or four
27 years.

28 (d) In addition to the penalties provided in this
29 section, the sentencing court may order a person
30 convicted of a felony under this section to register as a sex
31 offender pursuant to subparagraph (E) of paragraph (2)
32 of subdivision (a) of Section 290.

33 (e) For the purposes of this section, “harasses” means
34 a knowing and willful course of conduct directed at a
35 specific person that seriously alarms, annoys, torments, or
36 terrorizes the person, and that serves no legitimate
37 purpose. This course of conduct must be such as would
38 cause a reasonable person to suffer substantial emotional
39 distress, and must actually cause substantial emotional
40 distress to the person.

1 (f) For purposes of this section, “course of conduct”
2 means a pattern of conduct composed of a series of acts
3 over a period of time, however short, evidencing a
4 continuity of purpose. Constitutionally protected activity
5 is not included within the meaning of “course of
6 conduct.”

7 (g) For the purposes of this section, “credible threat”
8 means a verbal or written threat or a threat implied by a
9 pattern of conduct or a combination of verbal or written
10 statements and conduct made with the intent to place the
11 person that is the target of the threat in reasonable fear
12 for his or her safety or the safety of his or her family and
13 made with the apparent ability to carry out the threat so
14 as to cause the person who is the target of the threat to
15 reasonably fear for his or her safety or the safety of his or
16 her family. It is not necessary to prove that the defendant
17 had the intent to actually carry out the threat. The
18 present incarceration of a person making the threat shall
19 not be a bar to prosecution under this section.

20 (h) This section shall not apply to conduct that occurs
21 during labor picketing.

22 (i) If probation is granted, or the execution or
23 imposition of a sentence is suspended, for any person
24 convicted under this section, it shall be a condition of
25 probation that the person participate in counseling, as
26 designated by the court. However, the court, upon a
27 showing of good cause, may find that the counseling
28 requirement shall not be imposed.

29 (j) The sentencing court also shall consider issuing an
30 order restraining the defendant from any contact with
31 the victim, that may be valid for up to 10 years, as
32 determined by the court. It is the intent of the Legislature
33 that the length of any restraining order be based upon the
34 seriousness of the facts before the court, the probability
35 of future violations, and the safety of the victim and his or
36 her immediate family.

37 (k) For purposes of this section, “immediate family”
38 means any spouse, parent, child, any person related by
39 consanguinity or affinity within the second degree, or any
40 other person who regularly resides in the household, or



1 who, within the prior six months, regularly resided in the
2 household.

3 (I) The court shall consider whether the defendant
4 would benefit from treatment pursuant to Section 2684.
5 If it is determined to be appropriate, the court shall
6 recommend that the Department of Corrections make a
7 certification as provided in Section 2684. Upon the
8 certification, the defendant shall be evaluated and
9 transferred to the appropriate hospital for treatment
10 pursuant to Section 2684.

11 SEC. 3. Section 13515.55 is added to the Penal Code,
12 to read:

13 13515.55. Every city police officer or deputy sheriff at
14 a supervisory level and below who is assigned field or
15 investigative duties shall complete a high technology
16 crimes and computer seizure training course certified by
17 the Commission on Peace Officer Standards and Training
18 by January 1, 2000, or within 18 months of assignment to
19 field duties. Completion of the course may be satisfied by
20 telecourse, video training tape, or other instruction. The
21 training shall, at a minimum, address relevant laws,
22 recognition of high technology crimes and computer
23 evidence collection and preservation.

24 SEC. 4. Section 13980 is added to the Penal Code, to
25 read:

26 13980. (a) The Office of Criminal Justice Planning
27 shall undertake a study to determine whether it would be
28 feasible to develop a state-operated center on computer
29 forensics for the purpose of collecting, compiling, and
30 analyzing information, including evidence seized in
31 connection with criminal proceedings, in computer
32 formats to provide assistance to state and local law
33 enforcement agencies in the investigation and
34 prosecution of crimes involving computer technology.

35 (b) The office shall involve state and local law
36 enforcement agencies as well as representatives of the
37 computer industry in the development of the feasibility
38 study required by this section.

39 (c) The office shall report its findings and conclusions
40 to the Legislature on or before June 30, 2000.



1 SEC. 5. No reimbursement is required by this act
2 pursuant to Section 6 of Article XIII B of the California
3 Constitution for certain costs that may be incurred by a
4 local agency or school district because in that regard this
5 act creates a new crime or infraction, eliminates a crime
6 or infraction, or changes the penalty for a crime or
7 infraction, within the meaning of Section 17556 of the
8 Government Code, or changes the definition of a crime
9 within the meaning of Section 6 of Article XIII B of the
10 California Constitution.

11 However, notwithstanding Section 17610 of the
12 Government Code, if the Commission on State Mandates
13 determines that this act contains other costs mandated by
14 the state, reimbursement to local agencies and school
15 districts for those costs shall be made pursuant to Part 7
16 (commencing with Section 17500) of Division 4 of Title
17 2 of the Government Code. If the statewide cost of the
18 claim for reimbursement does not exceed one million
19 dollars (\$1,000,000), reimbursement shall be made from
20 the State Mandates Claims Fund.

21 Notwithstanding Section 17580 of the Government
22 Code, unless otherwise specified, the provisions of this act
23 shall become operative on the same date that the act
24 takes effect pursuant to the California Constitution.

