

AMENDED IN SENATE JULY 7, 1998  
AMENDED IN SENATE JUNE 17, 1998  
AMENDED IN ASSEMBLY MAY 22, 1998  
AMENDED IN ASSEMBLY APRIL 21, 1998  
AMENDED IN ASSEMBLY APRIL 2, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2351**

**Introduced by Assembly Member Hertzberg**

(Principal coauthor: Senator Leslie)

**(Coauthors: Assembly Members Alquist, Cunneen, Figueroa,  
Honda, Knox, Kuehl, Lempert, Napolitano, Perata, Scott,  
Shelley, Sweeney, and Washington)**

February 20, 1998

An act to amend Sections 646.9 and 653m of, and to add Sections ~~539.5, 13515.55, 13515.55~~ and 13980 to, the Penal Code, relating to computer crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 2351, as amended, Hertzberg. Computer crime.

~~(1) Existing law prohibits the false personation of any person in order to commit larceny, as well as the impersonation of peace officers, members of fire departments, and employees of public utilities.~~

~~This bill would provide that a false personation includes that attempted or accomplished by use of a electronic communication device, as defined. By expanding the scope of~~



~~an existing crime, this bill would impose a state-mandated local program.~~

(2)

(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 expand the definition of the term “credible threat” to include threats which are communicated through the use of an electronic communications device, including telephones, cellular phones, computers, video recorders, ~~televisions~~, fax machines, and pagers. This bill would also incorporate the definition of “electronic communication” used in a specified provision of federal law. By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

(3)

(2) Existing law prohibits the making of telephone calls to others with the intent to annoy, where the caller either uses obscene language or makes threats to the other parties person or property. Existing law also prohibits the repeated telephoning of another at the recipient’s residence or, under certain circumstances, place of work, with the intent to annoy, except where the repeated telephoning is conducted in good faith. Existing law also provides that an offense under these provisions committed by use of a telephone may be deemed to have been committed at either the place of origin or receipt of the telephone call or calls.

This bill would expand these provisions to include contacts by means of an electronic communications device, including telephones, cellular phones, computers, video recorders, ~~televisions~~, fax machines, and pagers. *This bill would also create a good faith exception for obscene or threatening telephone calls or electronic contacts made with the intent to annoy.* This bill would ~~also~~ provide that an offense committed by means of an electronic communication device medium, including the Internet, may be deemed to have been committed where the electronic communication or communications were originally sent or were first viewed by



the recipient. This bill would incorporate the definition of “electronic communication” used in a specified provision of federal law. By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

(4)

(3) 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. *The bill would require that this training be offered to all city police officers and deputy sheriffs as part of continuing professional training.* By imposing additional duties on local agencies, it would impose a state-mandated local program.

(5)

(4) 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.

(6)

(5) This bill would provide that it shall only become operative if SB 1796 is also enacted and become operative on or before January 1, 1999.

(7)

(6) 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:~~

3 ~~539.5. (a) For purposes of this chapter, a false~~  
4 ~~personation includes that attempted or accomplished by~~  
5 ~~use of an electronic communication device.~~

6 ~~(b) "Electronic communication device" includes, but~~  
7 ~~is not limited to, telephones, cellular phones, computers,~~  
8 ~~video recorders, televisions, fax machines, or pagers.~~  
9 ~~"Electronic communication" has the same meaning as~~  
10 ~~the term defined in Subsection 12 of Section 2510 of Title~~  
11 ~~18 of the United States Code.~~

12 ~~SEC. 2.~~

13 *SECTION 1.* Section 646.9 of the Penal Code is  
14 amended to read:

15 646.9. (a) Any person who willfully, maliciously, and  
16 repeatedly follows or harasses another person and who  
17 makes a credible threat with the intent to place that  
18 person in reasonable fear for his or her safety, or the safety  
19 of his or her immediate family, is guilty of the crime of



1 stalking, punishable by imprisonment in a county jail for  
2 not more than one year or by a fine of not more than one  
3 thousand dollars (\$1,000), or by both that fine and  
4 imprisonment, or by imprisonment in the state prison.

5 (b) Any person who violates subdivision (a) when  
6 there is a temporary restraining order, injunction, or any  
7 other court order in effect prohibiting the behavior  
8 described in subdivision (a) against the same party, shall  
9 be punished by imprisonment in the state prison for two,  
10 three, or four years.

11 (c) Every person who, having been convicted of a  
12 felony under this section, commits a second or subsequent  
13 violation of this section shall be punished by  
14 imprisonment in the state prison for two, three, or four  
15 years.

16 (d) In addition to the penalties provided in this  
17 section, the sentencing court may order a person  
18 convicted of a felony under this section to register as a sex  
19 offender pursuant to subparagraph (E) of paragraph (2)  
20 of subdivision (a) of Section 290.

21 (e) For the purposes of this section, “harasses” means  
22 a knowing and willful course of conduct directed at a  
23 specific person that seriously alarms, annoys, torments, or  
24 terrorizes the person, and that serves no legitimate  
25 purpose. This course of conduct must be such as would  
26 cause a reasonable person to suffer substantial emotional  
27 distress, and must actually cause substantial emotional  
28 distress to the person.

29 (f) For purposes of this section, “course of conduct”  
30 means a pattern of conduct composed of a series of acts  
31 over a period of time, however short, evidencing a  
32 continuity of purpose. Constitutionally protected activity  
33 is not included within the meaning of “course of  
34 conduct.”

35 (g) For the purposes of this section, “credible threat”  
36 means a verbal or written threat, including that  
37 performed through the use of an  
38 electroniccommunication device, or a threat implied by  
39 a pattern of conduct or a combination of verbal, written,  
40 or electronically communicated statements and conduct



1 made with the intent to place the person that is the target  
 2 of the threat in reasonable fear for his or her safety or the  
 3 safety of his or her family and made with the apparent  
 4 ability to carry out the threat so as to cause the person who  
 5 is the target of the threat to reasonably fear for his or her  
 6 safety or the safety of his or her family. It is not necessary  
 7 to prove that the defendant had the intent to actually  
 8 carry out the threat. The present incarceration of a  
 9 person making the threat shall not be a bar to prosecution  
 10 under this section.

11 (h) For purposes of this section, the term “electronic  
 12 communication device” includes, but is not limited to,  
 13 telephones, cellular phones, computers, video recorders,  
 14 ~~televisions,~~ fax machines, or pagers. “Electronic  
 15 communication” has the same meaning as the term  
 16 defined in Subsection 12 of Section 2510 of Title 18 of the  
 17 United States Code.

18 (i) This section shall not apply to conduct that occurs  
 19 during labor picketing.

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

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

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



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

9 ~~SEC. 3.~~

10 SEC. 2. Section 653m of the Penal Code is amended  
11 to read:

12 653m. (a) Every person who, with intent to annoy,  
13 telephones or makes contact by means of an electronic  
14 communication device with another and addresses to or  
15 about the other person any obscene language or  
16 addresses to the other person any threat to inflict injury  
17 to the person or property of the person addressed or any  
18 member of his or her family, is guilty of a misdemeanor.  
19 *Nothing in this subdivision shall apply to telephone calls*  
20 *or electronic contacts made in good faith.*

21 (b) Every person who makes repeated telephone calls  
22 or makes repeated contact by means of an electronic  
23 communication device with intent to annoy another  
24 person at his or her residence, is, whether or not  
25 conversation ensues from making the telephone call or  
26 electronic contact, guilty of a misdemeanor. Nothing in  
27 this subdivision shall apply to telephone calls or electronic  
28 contacts made in good faith.

29 (c) Every person who makes repeated telephone calls  
30 or makes repeated contact by means of an electronic  
31 communication device with the intent to annoy another  
32 person at his or her place of work is guilty of a  
33 misdemeanor punishable by a fine of not more than one  
34 thousand dollars (\$1,000), or by imprisonment in a county  
35 jail for not more than one year, or by both the fine and  
36 imprisonment. Nothing in this subdivision shall apply to  
37 telephone calls or electronic contacts made in good faith.  
38 This subdivision applies only if one or both of the  
39 following circumstances exist:



1 (1) There is a temporary restraining order, an  
2 injunction, or any other court order, or any combination  
3 of these court orders, in effect prohibiting the behavior  
4 described in this section.

5 (2) The person makes repeated telephone calls or  
6 makes repeated contact by means of an electronic  
7 communication device with the intent to annoy another  
8 person at his or her place of work, totaling more than 10  
9 times in a 24-hour period, whether or not conversation  
10 ensues from making the telephone call or electronic  
11 contact, and the repeated telephone calls or electronic  
12 contacts are made to the workplace of an adult or fully  
13 emancipated minor who is a spouse, former spouse,  
14 cohabitant, former cohabitant, or person with whom the  
15 person has a child or has had a dating or engagement  
16 relationship or is having a dating or engagement  
17 relationship.

18 (d) Any offense committed by use of a telephone may  
19 be deemed to have been committed where the telephone  
20 call or calls were made or received. Any offense  
21 committed by use of an electronic communication device  
22 or medium, including the Internet, may be deemed to  
23 have been committed where the electronic  
24 communication or communications were originally sent  
25 or first viewed by the recipient.

26 (e) Subdivision (a), (b), or (c) is violated when the  
27 person acting with intent to annoy makes a telephone call  
28 requesting a return call and performs the acts prohibited  
29 under subdivision (a), (b), or (c) upon receiving the  
30 return call.

31 (f) If probation is granted, or the execution or  
32 imposition of sentence is suspended, for any person  
33 convicted under this section, the court may order as a  
34 condition of probation that the person participate in  
35 counseling.

36 (g) For purposes of this section the term “electronic  
37 communication device” includes, but is not limited to,  
38 telephones, cellular phones, computers, video recorders,  
39 ~~televisions~~, fax machines, or pagers. “Electronic  
40 communication” has the same meaning as the term



1 defined in Subsection 12 of Section 2510 of Title 18 of the  
2 United States Code.

3 ~~SEC. 4.~~

4 *SEC. 3.* Section 13515.55 is added to the Penal Code,  
5 to read:

6 13515.55. Every city police officer or deputy sheriff at  
7 a supervisory level ~~and below~~ who is assigned field or  
8 investigative duties shall complete a high technology  
9 crimes and computer seizure training course certified by  
10 the Commission on Peace Officer Standards and Training  
11 by January 1, 2000, or within 18 months of assignment to  
12 ~~field~~ *supervisory* duties. Completion of the course may be  
13 satisfied by telecourse, video training tape, or other  
14 instruction. This training shall be offered *to all city police*  
15 *officers and deputy sheriffs* as part of continuing  
16 professional training. The training shall, at a minimum,  
17 address relevant laws, recognition of high technology  
18 crimes and computer evidence collection and  
19 preservation.

20 ~~SEC. 5.~~

21 *SEC. 4.* Section 13980 is added to the Penal Code, to  
22 read:

23 13980. (a) The Office of Criminal Justice Planning  
24 shall undertake a study to determine whether it would be  
25 feasible to develop a state-operated center on computer  
26 forensics for the purpose of collecting, compiling, and  
27 analyzing information, including evidence seized in  
28 connection with criminal proceedings, in computer  
29 formats to provide assistance to state and local law  
30 enforcement agencies in the investigation and  
31 prosecution of crimes involving computer technology.

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

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

38 ~~SEC. 6.~~



1 SEC. 5. This act shall become operative only if Senate  
2 Bill 1796 is also enacted and becomes operative on or  
3 before January 1, 1999.

4 ~~SEC. 7.~~

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

15 However, notwithstanding Section 17610 of the  
16 Government Code, if the Commission on State Mandates  
17 determines that this act contains other costs mandated by  
18 the state, reimbursement to local agencies and school  
19 districts for those costs shall be made pursuant to Part 7  
20 (commencing with Section 17500) of Division 4 of Title  
21 2 of the Government Code. If the statewide cost of the  
22 claim for reimbursement does not exceed one million  
23 dollars (\$1,000,000), reimbursement shall be made from  
24 the State Mandates Claims Fund.

25 Notwithstanding Section 17580 of the Government  
26 Code, unless otherwise specified, the provisions of this act  
27 shall become operative on the same date that the act  
28 takes effect pursuant to the California Constitution.

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