

AMENDED IN ASSEMBLY MARCH 8, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 33

Introduced by Assembly Member Sharon Runner

(Coauthors: Assembly Members Benoit, Bermudez, Bogh, Chavez, Cogdill, Cohn, Daucher, DeVore, Garcia, Shirley Horton, Huff, La Suer, Leslie, Mountjoy, Nakanishi, Plescia, Spitzer, Walters, and Wyland)

(Coauthors: Senators Ackerman, Battin, Cox, Denham, Dutton, Escutia, Maldonado, Margett, and Runner)

December 6, 2004

An act to amend ~~Section 272~~ Sections 272 and 502.01 of the Penal Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

AB 33, as amended, Sharon Runner. Contact with minor.

Existing law provides that it is a crime for an adult stranger to contact or communicate with a minor, 12 years of age or younger, who the adult knew or should have known was 12 years of age or younger, to lure him or her away, as specified, for any purpose. Existing law provides that this crime is punishable by a fine, by imprisonment in a county jail, or by both.

This bill would prohibit this conduct when engaged in with a person who is ~~16~~ 14 years of age or younger. This bill would provide that this crime is punishable by imprisonment in a county jail ~~and~~ or a fine of ~~no less than \$2,500, but no more than \$5,000~~ \$1,000, or both.

Existing law provides that certain property, such as a computer, may be subject to forfeiture if used by a defendant to commit particular offenses, as specified. Existing law further provides the

process by which property is forfeited and by which it may be recovered by the owner.

This bill would ~~also~~ provide that if the defendant used ~~a~~ *his* or her computer to communicate with the victim ~~and has been convicted of an offense that requires him or her to register as a sex offender or has obscene matter stored on that computer that violates provisions prohibiting possession of matter depicting a minor engaging in or simulating sexual conduct,~~ *the in the attempt to lure the victim then* that computer is subject to forfeiture. Because this bill would change the definition of a crime, it 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 272 of the Penal Code is amended to
2 read:
3 272. (a) (1) Every person who commits any act or omits the
4 performance of any duty, which act or omission causes or tends
5 to cause or encourage any person under the age of 18 years to
6 come within the provisions of Section 300, 601, or 602 of the
7 Welfare and Institutions Code or which act or omission
8 contributes thereto, or any person who, by any act or omission, or
9 by threats, commands, or persuasion, induces or endeavors to
10 induce any person under the age of 18 years or any ward or
11 dependent child of the juvenile court to fail or refuse to conform
12 to a lawful order of the juvenile court, or to do or to perform any
13 act or to follow any course of conduct or to so live as would
14 cause or manifestly tend to cause that person to become or to
15 remain a person within the provisions of Section 300, 601, or 602
16 of the Welfare and Institutions Code, is guilty of a misdemeanor
17 and upon conviction thereof shall be punished by a fine not
18 exceeding two thousand five hundred dollars (\$2,500), or by

1 imprisonment in the county jail for not more than one year, or by
2 both fine and imprisonment in a county jail, or may be released
3 on probation for a period not exceeding five years.

4 (2) For purposes of this subdivision, a parent or legal guardian
5 to any person under the age of 18 years shall have the duty to
6 exercise reasonable care, supervision, protection, and control
7 over their minor child.

8 (b) (1) An adult stranger who is 21 years of age or older, who
9 knowingly contacts or communicates with a minor who is ~~16~~ 14
10 years of age or younger, who knew or reasonably should have
11 known that the minor is ~~16~~ 14 years of age or younger, for the
12 purpose of persuading and luring, or transporting, or attempting
13 to persuade and lure, or transport, that minor away from the
14 minor's home or from any location known by the minor's parent,
15 legal guardian, or custodian, to be a place where the minor is
16 located, for any purpose, without the express consent of the
17 minor's parent or legal guardian, and with the intent to avoid the
18 consent of the minor's parent or legal guardian, is guilty of a
19 ~~crime punishable by imprisonment in a county jail for a period~~
20 ~~not exceeding six months and a fine of not less than two~~
21 ~~thousand five hundred dollars (\$2,500), but no more than five~~
22 ~~thousand dollars (\$5,000). a misdemeanor punishable by~~
23 ~~imprisonment in a county jail for a period not to exceed six~~
24 ~~months, or by a fine not to exceed one thousand dollars (\$1,000),~~
25 ~~or both.~~

26 (2) This subdivision shall not apply in an emergency situation.

27 (3) As used in this subdivision, the following terms are
28 defined to mean:

29 (A) "Emergency situation" means a situation where the minor
30 is threatened with imminent bodily harm, emotional harm, or
31 psychological harm.

32 (B) "Contact" or "communication" includes, but is not limited
33 to, the use of a telephone or the Internet, as defined in Section
34 17538 of the Business and Professions Code.

35 (C) "Stranger" means a person of casual acquaintance with
36 whom no substantial relationship exists, or an individual with
37 whom a relationship has been established or promoted for the
38 primary purpose of victimization, as defined in subdivision (e) of
39 Section 6600 of the Welfare and Institutions Code.

1 (D) “Express consent” means oral or written permission that is
2 positive, direct, and unequivocal, requiring no inference or
3 implication to supply its meaning.

4 (4) This section shall not be interpreted to criminalize acts of
5 persons contacting minors within the scope and course of their
6 employment, or status as a volunteer of a recognized civic or
7 charitable organization.

8 (5) This section is intended to protect minors and to help
9 parents and legal guardians exercise reasonable care, supervision,
10 protection, and control over minor children.

11 ~~(6) If the defendant used a computer to communicate with the~~
12 ~~victim via the Internet and has previously been convicted of any~~
13 ~~offense listed in paragraph (2) of subdivision (a) of Section 290~~
14 ~~or has obscene matter stored on that computer that violates~~
15 ~~subdivision (a) of Section 311.11, the computer is subject to~~
16 ~~forfeiture to the Department of Justice. Proceedings for forfeiture~~
17 ~~shall be initiated by a petition of forfeiture filed in the Superior~~
18 ~~Court in which the matter is located.~~

19 ~~(7) Fines collected pursuant to this subdivision shall be~~
20 ~~transferred by the county treasurer to the Controller for deposit~~
21 ~~into the General Fund and, upon appropriation by the Legislature~~
22 ~~to the Department of Justice, used in implementing the~~
23 ~~provisions of Section 290.~~

24 *SEC. 2. Section 502.01 of the Penal Code is amended to*
25 *read:*

26 502.01. (a) As used in this section:

27 (1) “Property subject to forfeiture” means any property of the
28 defendant that is illegal telecommunications equipment as
29 defined in subdivision (g) of Section 502.8, or a computer,
30 computer system, or computer network, and any software or data
31 residing thereon, if the telecommunications device, computer,
32 computer system, or computer network was used in committing a
33 violation of, or conspiracy to commit a violation of, *subdivision*
34 *(b) of Section 272, Section 288, 288.2, 311.1, 311.2, 311.3,*
35 *311.4, 311.5, 311.10, 311.11, 422, 470, 470a, 472, 475, 476, 480,*
36 *483.5, 484g, or subdivision (a), (b), or (d) of Section 484e,*
37 *subdivision (a) of Section 484f, subdivision (b) or (c) of Section*
38 *484i, subdivision (c) of Section 502, or Section 502.7, 502.8,*
39 *529, 529a, or 530.5, 537e, 593d, 593e, or 646.9, or was used as a*
40 *repository for the storage of software or data obtained in*

1 violation of those provisions. Forfeiture shall not be available for
2 any property used solely in the commission of an infraction. If
3 the defendant is a minor, it also includes property of the parent or
4 guardian of the defendant.

5 (2) "Sentencing court" means the court sentencing a person
6 found guilty of violating or conspiring to commit a violation of
7 *subdivision (b) of Section 272*, Section 288, 288.2, 311.1, 311.2,
8 311.3, 311.4, 311.5, 311.10, 311.11, 422, 470, 470a, 472, 475,
9 476, 480, 483.5, 484g, or subdivision (a), (b), or (d) of Section
10 484e, subdivision (d) of Section 484e, subdivision (a) of Section
11 484f, subdivision (b) or (c) of Section 484i, subdivision (c) of
12 Section 502, or Section 502.7, 502.8, 529, 529a, 530.5, 537e,
13 593d, 593e, or 646.9, or, in the case of a minor, found to be a
14 person described in Section 602 of the Welfare and Institutions
15 Code because of a violation of those provisions, the juvenile
16 court.

17 (3) "Interest" means any property interest in the property
18 subject to forfeiture.

19 (4) "Security interest" means an interest that is a lien,
20 mortgage, security interest, or interest under a conditional sales
21 contract.

22 (5) "Value" has the following meanings:

23 (A) When counterfeit items of computer software are
24 manufactured or possessed for sale, the "value" of those items
25 shall be equivalent to the retail price or fair market price of the
26 true items that are counterfeited.

27 (B) When counterfeited but unassembled components of
28 computer software packages are recovered, including, but not
29 limited to, counterfeited computer diskettes, instruction manuals,
30 or licensing envelopes, the "value" of those components of
31 computer software packages shall be equivalent to the retail price
32 or fair market price of the number of completed computer
33 software packages that could have been made from those
34 components.

35 (b) The sentencing court shall, upon petition by the
36 prosecuting attorney, at any time following sentencing, or by
37 agreement of all parties, at the time of sentencing, conduct a
38 hearing to determine whether any property or property interest is
39 subject to forfeiture under this section. At the forfeiture hearing,
40 the prosecuting attorney shall have the burden of establishing, by

1 a preponderance of the evidence, that the property or property
2 interests are subject to forfeiture. The prosecuting attorney may
3 retain seized property that may be subject to forfeiture until the
4 sentencing hearing.

5 (c) Prior to the commencement of a forfeiture proceeding, the
6 law enforcement agency seizing the property subject to forfeiture
7 shall make an investigation as to any person other than the
8 defendant who may have an interest in it. At least 30 days before
9 the hearing to determine whether the property should be
10 forfeited, the prosecuting agency shall send notice of the hearing
11 to any person who may have an interest in the property that arose
12 before the seizure.

13 A person claiming an interest in the property shall file a motion
14 for the redemption of that interest at least 10 days before the
15 hearing on forfeiture, and shall send a copy of the motion to the
16 prosecuting agency and to the probation department.

17 If a motion to redeem an interest has been filed, the sentencing
18 court shall hold a hearing to identify all persons who possess
19 valid interests in the property. No person shall hold a valid
20 interest in the property if, by a preponderance of the evidence,
21 the prosecuting agency shows that the person knew or should
22 have known that the property was being used in violation of, or
23 conspiracy to commit a violation of, *subdivision (b) of Section*
24 *272, Section 288, 288.2, 311.1, 311.2, 311.3, 311.4, 311.5,*
25 *311.10, 311.11, 470, 470a, 472, 475, 476, 480, 483.5, 484g, or*
26 *subdivision (a), (b), or (d) of Section 484e, subdivision (a) of*
27 *Section 484f, subdivision (b) or (c) of Section 484i, subdivision*
28 *(c) of Section 502, or Section 502.7, 502.8, 529, 529a, 530.5,*
29 *537e, 593d, 593e, or 646.9, and that the person did not take*
30 *reasonable steps to prevent that use, or if the interest is a security*
31 *interest, the person knew or should have known at the time that*
32 *the security interest was created that the property would be used*
33 *for a violation.*

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

- 36 (1) The court shall determine the value of the property.
- 37 (2) The court shall determine the value of each valid interest in
38 the property.
- 39 (3) If the value of the property is greater than the value of the
40 interest, the holder of the interest shall be entitled to ownership

1 of the property upon paying the court the difference between the
2 value of the property and the value of the valid interest.

3 If the holder of the interest declines to pay the amount
4 determined under paragraph (2), the court may order the property
5 sold and designate the prosecutor or any other agency to sell the
6 property. The designated agency shall be entitled to seize the
7 property and the holder of the interest shall forward any
8 documentation underlying the interest, including any ownership
9 certificates for that property, to the designated agency. The
10 designated agency shall sell the property and pay the owner of
11 the interest the proceeds, up to the value of that interest.

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

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

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

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

27 (3) If the minor is convicted of a violation of Section 288,
28 288.2, 311.1, 311.2, 311.3, 311.4, 311.5, 311.10, 311.11, 470,
29 470a, 472, 476, 480, or subdivision (b) of Section 484e,
30 subdivision (d) of Section 484e, subdivision (a) of Section 484f,
31 subdivision (b) of Section 484i, subdivision (c) of Section 502, or
32 Section 502.7, 502.8, 529, 529a, or 530.5, within two years after
33 the date on which the minor is sentenced, and the violation
34 involves a computer or telecommunications device owned by the
35 parent or guardian, the original property subject to forfeiture, and
36 the property involved in the new offense, shall be subject to
37 forfeiture notwithstanding paragraph (2).

38 (4) Notwithstanding paragraph (1), (2), or (3), or any other
39 provision of this chapter, if a minor's parent or guardian makes
40 full restitution to the victim of a crime enumerated in this chapter

1 in an amount or manner determined by the court, the forfeiture
2 provisions of this chapter do not apply to the property of that
3 parent or guardian if the property was located in the family's
4 primary residence during the commission of the crime.

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

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

14 (1) First, to the victim, if the victim elects to take the property
15 as full or partial restitution for injury, victim expenditures, or
16 compensatory damages, as defined in paragraph (1) of
17 subdivision (e) of Section 502. If the victim elects to receive the
18 property under this paragraph, the value of the property shall be
19 determined by the court and that amount shall be credited against
20 the restitution owed by the defendant. The victim shall not be
21 penalized for electing not to accept the forfeited property in lieu
22 of full or partial restitution.

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

25 (A) The prosecuting agency.

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

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

30 (D) Other state and local public entities, including school
31 districts.

32 (E) Nonprofit charitable organizations.

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

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

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

3 ~~SEC. 2.—~~

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