

AMENDED IN SENATE JUNE 30, 2005

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, Koretz, 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 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 *under* 14 years of age ~~or younger~~. This bill would provide that this crime is punishable ~~by imprisonment in a county jail or a fine of no more than \$1,000, or both~~ *as an infraction or a misdemeanor*.

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 provide that if the defendant used his or her computer to communicate with the victim 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
 19 imprisonment in the county jail for not more than one year, or by
 20 both fine and imprisonment in a county jail, or may be released
 21 on probation for a period not exceeding five years.

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

5 (b) (1) An adult stranger who is 21 years of age or older, who
6 knowingly contacts or communicates with a minor who is *under*
7 14 years of age ~~or younger~~, who knew or reasonably should have
8 known that the minor is *under* 14 years of age ~~or younger~~, for the
9 purpose of persuading and luring, or transporting, or attempting
10 to persuade and lure, or transport, that minor away from the
11 minor's home or from any location known by the minor's parent,
12 legal guardian, or custodian, to be a place where the minor is
13 located, for any purpose, without the express consent of the
14 minor's parent or legal guardian, and with the intent to avoid the
15 consent of the minor's parent or legal guardian, is guilty of a
16 ~~misdemeanor punishable by imprisonment in a county jail for a~~
17 ~~period not to exceed six months, or by a fine not to exceed one~~
18 ~~thousand dollars (\$1,000), or both. *an infraction or a*~~
19 ~~*misdemeanor.*~~

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

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

23 (A) "Emergency situation" means a situation where the minor
24 is threatened with imminent bodily harm, emotional harm, or
25 psychological harm.

26 (B) "Contact" or "communication" includes, but is not limited
27 to, the use of a telephone or the Internet, as defined in Section
28 17538 of the Business and Professions Code.

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

34 (D) "Express consent" means oral or written permission that is
35 positive, direct, and unequivocal, requiring no inference or
36 implication to supply its meaning.

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

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

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

5 502.01. (a) As used in this section:

6 (1) "Property subject to forfeiture" means any property of the
7 defendant that is illegal telecommunications equipment as
8 defined in subdivision (g) of Section 502.8, or a computer,
9 computer system, or computer network, and any software or data
10 residing thereon, if the telecommunications device, computer,
11 computer system, or computer network was used in committing a
12 violation of, or conspiracy to commit a violation of, subdivision
13 (b) of Section 272, Section 288, 288.2, 311.1, 311.2, 311.3,
14 311.4, 311.5, 311.10, 311.11, 422, 470, 470a, 472, 475, 476, 480,
15 483.5, 484g, or subdivision (a), (b), or (d) of Section 484e,
16 subdivision (a) of Section 484f, subdivision (b) or (c) of Section
17 484i, subdivision (c) of Section 502, or Section 502.7, 502.8,
18 529, 529a, or 530.5, 537e, 593d, 593e, or 646.9, or was used as a
19 repository for the storage of software or data obtained in
20 violation of those provisions. Forfeiture shall not be available for
21 any property used solely in the commission of an infraction. If
22 the defendant is a minor, it also includes property of the parent or
23 guardian of the defendant.

24 (2) "Sentencing court" means the court sentencing a person
25 found guilty of violating or conspiring to commit a violation of
26 subdivision (b) of Section 272, Section 288, 288.2, 311.1, 311.2,
27 311.3, 311.4, 311.5, 311.10, 311.11, 422, 470, 470a, 472, 475,
28 476, 480, 483.5, 484g, or subdivision (a), (b), or (d) of Section
29 484e, subdivision (d) of Section 484e, subdivision (a) of Section
30 484f, subdivision (b) or (c) of Section 484i, subdivision (c) of
31 Section 502, or Section 502.7, 502.8, 529, 529a, 530.5, 537e,
32 593d, 593e, or 646.9, or, in the case of a minor, found to be a
33 person described in Section 602 of the Welfare and Institutions
34 Code because of a violation of those provisions, the juvenile
35 court.

36 (3) "Interest" means any property interest in the property
37 subject to forfeiture.

38 (4) "Security interest" means an interest that is a lien,
39 mortgage, security interest, or interest under a conditional sales
40 contract.

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

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

6 (B) When counterfeited but unassembled components of
7 computer software packages are recovered, including, but not
8 limited to, counterfeited computer diskettes, instruction manuals,
9 or licensing envelopes, the “value” of those components of
10 computer software packages shall be equivalent to the retail price
11 or fair market price of the number of completed computer
12 software packages that could have been made from those
13 components.

14 (b) The sentencing court shall, upon petition by the
15 prosecuting attorney, at any time following sentencing, or by
16 agreement of all parties, at the time of sentencing, conduct a
17 hearing to determine whether any property or property interest is
18 subject to forfeiture under this section. At the forfeiture hearing,
19 the prosecuting attorney shall have the burden of establishing, by
20 a preponderance of the evidence, that the property or property
21 interests are subject to forfeiture. The prosecuting attorney may
22 retain seized property that may be subject to forfeiture until the
23 sentencing hearing.

24 (c) Prior to the commencement of a forfeiture proceeding, the
25 law enforcement agency seizing the property subject to forfeiture
26 shall make an investigation as to any person other than the
27 defendant who may have an interest in it. At least 30 days before
28 the hearing to determine whether the property should be
29 forfeited, the prosecuting agency shall send notice of the hearing
30 to any person who may have an interest in the property that arose
31 before the seizure.

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

36 If a motion to redeem an interest has been filed, the sentencing
37 court shall hold a hearing to identify all persons who possess
38 valid interests in the property. No person shall hold a valid
39 interest in the property if, by a preponderance of the evidence,
40 the prosecuting agency shows that the person knew or should

1 have known that the property was being used in violation of, or
2 conspiracy to commit a violation of, subdivision (b) of Section
3 272, Section 288, 288.2, 311.1, 311.2, 311.3, 311.4, 311.5,
4 311.10, 311.11, 470, 470a, 472, 475, 476, 480, 483.5, 484g, or
5 subdivision (a), (b), or (d) of Section 484e, subdivision (a) of
6 Section 484f, subdivision (b) or (c) of Section 484i, subdivision
7 (c) of Section 502, or Section 502.7, 502.8, 529, 529a, 530.5,
8 537e, 593d, 593e, or 646.9, and that the person did not take
9 reasonable steps to prevent that use, or if the interest is a security
10 interest, the person knew or should have known at the time that
11 the security interest was created that the property would be used
12 for a violation.

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

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

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

18 (3) If the value of the property is greater than the value of the
19 interest, the holder of the interest shall be entitled to ownership
20 of the property upon paying the court the difference between the
21 value of the property and the value of the valid interest.

22 If the holder of the interest declines to pay the amount
23 determined under paragraph (2), the court may order the property
24 sold and designate the prosecutor or any other agency to sell the
25 property. The designated agency shall be entitled to seize the
26 property and the holder of the interest shall forward any
27 documentation underlying the interest, including any ownership
28 certificates for that property, to the designated agency. The
29 designated agency shall sell the property and pay the owner of
30 the interest the proceeds, up to the value of that interest.

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

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

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

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

7 (3) If the minor is convicted of a violation of Section 288,
8 288.2, 311.1, 311.2, 311.3, 311.4, 311.5, 311.10, 311.11, 470,
9 470a, 472, 476, 480, or subdivision (b) of Section 484e,
10 subdivision (d) of Section 484e, subdivision (a) of Section 484f,
11 subdivision (b) of Section 484i, subdivision (c) of Section 502, or
12 Section 502.7, 502.8, 529, 529a, or 530.5, within two years after
13 the date on which the minor is sentenced, and the violation
14 involves a computer or telecommunications device owned by the
15 parent or guardian, the original property subject to forfeiture, and
16 the property involved in the new offense, shall be subject to
17 forfeiture notwithstanding paragraph (2).

18 (4) Notwithstanding paragraph (1), (2), or (3), or any other
19 provision of this chapter, if a minor's parent or guardian makes
20 full restitution to the victim of a crime enumerated in this chapter
21 in an amount or manner determined by the court, the forfeiture
22 provisions of this chapter do not apply to the property of that
23 parent or guardian if the property was located in the family's
24 primary residence during the commission of the crime.

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

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

34 (1) First, to the victim, if the victim elects to take the property
35 as full or partial restitution for injury, victim expenditures, or
36 compensatory damages, as defined in paragraph (1) of
37 subdivision (e) of Section 502. If the victim elects to receive the
38 property under this paragraph, the value of the property shall be
39 determined by the court and that amount shall be credited against
40 the restitution owed by the defendant. The victim shall not be

1 penalized for electing not to accept the forfeited property in lieu
2 of full or partial restitution.

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

5 (A) The prosecuting agency.

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

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

10 (D) Other state and local public entities, including school
11 districts.

12 (E) Nonprofit charitable organizations.

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

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

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

23 SEC. 3. No reimbursement is required by this act pursuant to
24 Section 6 of Article XIII B of the California Constitution because
25 the only costs that may be incurred by a local agency or school
26 district will be incurred because this act creates a new crime or
27 infraction, eliminates a crime or infraction, or changes the
28 penalty for a crime or infraction, within the meaning of Section
29 17556 of the Government Code, or changes the definition of a
30 crime within the meaning of Section 6 of Article XIII B of the
31 California Constitution.