

ASSEMBLY BILL

No. 451

Introduced by Assembly Member Maddox

February 16, 1999

An act to amend Sections 480, 502, and 502.01 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 451, as introduced, Maddox. Counterfeiting: computer systems.

(1) Existing law provides that every person who makes, or knowingly has in his or her possession, any apparatus made use of in counterfeiting current coin or bills is punishable by imprisonment in the state prison for 2, 3, or 4 years; and that apparatus must be destroyed.

This bill would provide that if the counterfeiting apparatus used to violate the above provision is a computer, computer system, or computer network, the apparatus shall be subject to forfeiture, as specified. The bill would make conforming changes to the forfeiture provision. By revising the penalties for an existing crime, this bill would impose a state-mandated local program.

(2) Existing law makes it a misdemeanor or a felony to forge or counterfeit money, a driver's license or identification card, governmental or corporate seals, or fictitious bills, notes, or checks. Existing law also makes it a public offense, punishable as specified, to knowingly and without permission alter, damage, delete, destroy, or otherwise use any data, computer, computer system, or computer network in order to

either (a) devise or execute any scheme or artifice to defraud, deceive, or extort, or (b) wrongfully control or obtain money, property, or data. Existing law further provides that any computer, computer system, computer network, or any software or data, owned by the defendant, that is used during the commission of a public offense under the latter provision shall be subject to forfeiture, as specified.

This bill would, in addition, make it a misdemeanor or a felony to knowingly access and without permission use any data, computer, computer system, or computer network in order to unlawfully forge or counterfeit money, a driver's license or identification card, governmental or corporate seals, or fictitious bills, notes, or checks. Any data, computer, computer system, or computer network used in order to unlawfully forge or counterfeit money, a driver's license or identification card, governmental or corporate seals, or fictitious bills, notes, or checks would be subject to forfeiture. This bill would, furthermore, clarify a provision setting forth an exemption for any person who accesses his or her employer's computer system, computer network, computer program, or data when acting within the scope of his or her lawful employment. By creating a new crime or increasing the penalties for an existing crime, this bill would impose a state-mandated local program.

(3) 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 480 of the Penal Code is
2 amended to read:

3 480. (a) Every person who makes, or knowingly has
4 in his *or her* possession any die, plate, or any apparatus,
5 paper, metal, machine, or other thing whatever, made



1 use of in counterfeiting coin current in this state, or in
2 counterfeiting gold dust, gold or silver bars, bullion,
3 lumps, pieces, or nuggets, or in counterfeiting bank notes
4 or bills, is punishable by imprisonment in the state prison
5 for two, three, or four years; and all ~~such~~ dies, plates,
6 apparatus, paper, metal, or machine, intended for the
7 purpose aforesaid, must be destroyed.

8 *(b) (1) If the counterfeiting apparatus used to violate*
9 *this section is a computer, computer system, or computer*
10 *network, the apparatus shall be disposed of pursuant to*
11 *Section 502.01.*

12 *(2) For the purposes of this section, “computer,*
13 *computer system, or computer network” includes any*
14 *software or data residing on the computer, computer*
15 *system, or computer network used in a violation of this*
16 *section.*

17 SEC. 2. Section 502 of the Penal Code is amended to
18 read:

19 502. (a) It is the intent of the Legislature in enacting
20 this section to expand the degree of protection afforded
21 to individuals, businesses, and governmental agencies
22 from tampering, interference, damage, and
23 unauthorized access to lawfully created computer data
24 and computer systems. The Legislature finds and
25 declares that the proliferation of computer technology
26 has resulted in a concomitant proliferation of computer
27 crime and other forms of unauthorized access to
28 computers, computer systems, and computer data.

29 The Legislature further finds and declares that
30 protection of the integrity of all types and forms of
31 lawfully created computers, computer systems, and
32 computer data is vital to the protection of the privacy of
33 individuals as well as to the well-being of financial
34 institutions, business concerns, governmental agencies,
35 and others within this state that lawfully utilize those
36 computers, computer systems, and data.

37 (b) For the purposes of this section, the following
38 terms have the following meanings:

39 (1) “Access” means to gain entry to, instruct, or
40 communicate with the logical, arithmetical, or memory



1 function resources of a computer, computer system, or
2 computer network.

3 (2) “Computer network” means any system that
4 provides communications between one or more
5 computer systems and input/output devices including,
6 but not limited to, display terminals and printers
7 connected by telecommunication facilities.

8 (3) “Computer program or software” means a set of
9 instructions or statements, and related data, that when
10 executed in actual or modified form, cause a computer,
11 computer system, or computer network to perform
12 specified functions.

13 (4) “Computer services” includes, but is not limited to,
14 computer time, data processing, or storage functions, or
15 other uses of a computer, computer system, or computer
16 network.

17 (5) “Computer system” means a device or collection
18 of devices, including support devices and excluding
19 calculators that are not programmable and capable of
20 being used in conjunction with external files, one or more
21 of which contain computer programs, electronic
22 instructions, input data, and output data, that performs
23 functions including, but not limited to, logic, arithmetic,
24 data storage and retrieval, communication, and control.

25 (6) “Data” means a representation of information,
26 knowledge, facts, concepts, computer software,
27 computer programs or instructions. Data may be in any
28 form, in storage media, or as stored in the memory of the
29 computer or in transit or presented on a display device.

30 (7) “Supporting documentation” includes, but is not
31 limited to, all information, in any form, pertaining to the
32 design, construction, classification, implementation, use,
33 or modification of a computer, computer system,
34 computer network, computer program, or computer
35 software, which information is not generally available to
36 the public and is necessary for the operation of a
37 computer, computer system, computer network,
38 computer program, or computer software.



1 (8) “Injury” means any alteration, deletion, damage,
2 or destruction of a computer system, computer network,
3 computer program, or data caused by the access.

4 (9) “Victim expenditure” means any expenditure
5 reasonably and necessarily incurred by the owner or
6 lessee to verify that a computer system, computer
7 network, computer program, or data was or was not
8 altered, deleted, damaged, or destroyed by the access.

9 (10) “Computer contaminant” means any set of
10 computer instructions that are designed to modify,
11 damage, destroy, record, or transmit information within
12 a computer, computer system, or computer network
13 without the intent or permission of the owner of the
14 information. They include, but are not limited to, a group
15 of computer instructions commonly called viruses or
16 worms, that are self-replicating or self-propagating and
17 are designed to contaminate other computer programs or
18 computer data, consume computer resources, modify,
19 destroy, record, or transmit data, or in some other fashion
20 usurp the normal operation of the computer, computer
21 system, or computer network.

22 (11) “Internet domain name” means a globally
23 unique, hierarchical reference to an Internet host or
24 service, assigned through centralized Internet naming
25 authorities, comprising a series of character strings
26 separated by periods, with the rightmost character string
27 specifying the top of the hierarchy.

28 (c) Except as provided in subdivision (h), any person
29 who commits any of the following acts is guilty of a public
30 offense:

31 (1) Knowingly accesses and without permission alters,
32 damages, deletes, destroys, or otherwise uses any data,
33 computer, computer system, or computer network in
34 order to either (A) devise or execute any scheme or
35 artifice to defraud, deceive, or extort, or (B) wrongfully
36 control or obtain money, property, or data.

37 (2) Knowingly accesses and without permission takes,
38 copies, or makes use of any data from a computer,
39 computer system, or computer network, or takes or
40 copies any supporting documentation, whether existing



1 or residing internal or external to a computer, computer
2 system, or computer network.

3 (3) Knowingly and without permission uses or causes
4 to be used computer services.

5 (4) Knowingly accesses and without permission adds,
6 alters, damages, deletes, or destroys any data, computer
7 software, or computer programs which reside or exist
8 internal or external to a computer, computer system, or
9 computer network.

10 (5) Knowingly and without permission disrupts or
11 causes the disruption of computer services or denies or
12 causes the denial of computer services to an authorized
13 user of a computer, computer system, or computer
14 network.

15 (6) Knowingly and without permission provides or
16 assists in providing a means of accessing a computer,
17 computer system, or computer network in violation of
18 this section.

19 (7) Knowingly and without permission accesses or
20 causes to be accessed any computer, computer system, or
21 computer network.

22 (8) Knowingly introduces any computer contaminant
23 into any computer, computer system, or computer
24 network.

25 (9) Knowingly and without permission uses the
26 Internet domain name of another individual,
27 corporation, or entity in connection with the sending of
28 one or more electronic mail messages, and thereby
29 damages or causes damage to a computer, computer
30 system, or computer network.

31 *(10) Knowingly accesses and uses any data, computer,*
32 *computer system, or computer network in violation of*
33 *subdivision (d) of Section 470 or in violation of Section*
34 *470a, 472, or 476.*

35 (d) (1) Any person who violates any of the provisions
36 of paragraph (1), (2), (4), ~~or~~ (5), or (10) of subdivision
37 (c) is punishable by a fine not exceeding ten thousand
38 dollars (\$10,000), or by imprisonment in the state prison
39 for 16 months, or two or three years, or by both that fine
40 and imprisonment, or by a fine not exceeding five



1 thousand dollars (\$5,000), or by imprisonment in a county
2 jail not exceeding one year, or by both that fine and
3 imprisonment.

4 (2) Any person who violates paragraph (3) of
5 subdivision (c) is punishable as follows:

6 (A) For the first violation that does not result in injury,
7 and where the value of the computer services used does
8 not exceed four hundred dollars (\$400), by a fine not
9 exceeding five thousand dollars (\$5,000), or by
10 imprisonment in a county jail not exceeding one year, or
11 by both that fine and imprisonment.

12 (B) For any violation that results in a victim
13 expenditure in an amount greater than five thousand
14 dollars (\$5,000) or in an injury, or if the value of the
15 computer services used exceeds four hundred dollars
16 (\$400), or for any second or subsequent violation, by a
17 fine not exceeding ten thousand dollars (\$10,000), or by
18 imprisonment in the state prison for 16 months, or two or
19 three years, or by both that fine and imprisonment, or by
20 a fine not exceeding five thousand dollars (\$5,000), or by
21 imprisonment in a county jail not exceeding one year, or
22 by both that fine and imprisonment.

23 (3) Any person who violates paragraph (6), (7), or (8)
24 of subdivision (c) is punishable as follows:

25 (A) For a first violation that does not result in injury,
26 an infraction punishable by a fine not exceeding two
27 hundred fifty dollars (\$250).

28 (B) For any violation that results in a victim
29 expenditure in an amount not greater than five thousand
30 dollars (\$5,000), or for a second or subsequent violation,
31 by a fine not exceeding five thousand dollars (\$5,000), or
32 by imprisonment in a county jail not exceeding one year,
33 or by both that fine and imprisonment.

34 (C) For any violation that results in a victim
35 expenditure in an amount greater than five thousand
36 dollars (\$5,000), by a fine not exceeding ten thousand
37 dollars (\$10,000), or by imprisonment in the state prison
38 for 16 months, or two or three years, or by both that fine
39 and imprisonment, or by a fine not exceeding five
40 thousand dollars (\$5,000), or by imprisonment in a county



1 jail not exceeding one year, or by both that fine and
2 imprisonment.

3 (4) Any person who violates paragraph (9) of
4 subdivision (c) is punishable as follows:

5 (A) For a first violation that does not result in injury,
6 an infraction punishable by a fine not exceeding two
7 hundred fifty dollars (\$250).

8 (B) For any violation that results in injury, or for a
9 second or subsequent violation, by a fine not exceeding
10 five thousand dollars (\$5,000), or by imprisonment in a
11 county jail not exceeding one year, or by both that fine
12 and imprisonment.

13 (e) (1) In addition to any other civil remedy
14 available, the owner or lessee of the computer, computer
15 system, computer network, computer program, or data
16 may bring a civil action against any person convicted
17 under this section for compensatory damages, including
18 any expenditure reasonably and necessarily incurred by
19 the owner or lessee to verify that a computer system,
20 computer network, computer program, or data was or
21 was not altered, damaged, or deleted by the access. For
22 the purposes of actions authorized by this subdivision, the
23 conduct of an unemancipated minor shall be imputed to
24 the parent or legal guardian having control or custody of
25 the minor, pursuant to the provisions of Section 1714.1 of
26 the Civil Code.

27 (2) In any action brought pursuant to this subdivision
28 the court may award reasonable attorney's fees to a
29 prevailing party.

30 (3) A community college, state university, or
31 academic institution accredited in this state is required to
32 include computer-related crimes as a specific violation of
33 college or university student conduct policies and
34 regulations that may subject a student to disciplinary
35 sanctions up to and including dismissal from the academic
36 institution. This paragraph shall not apply to the
37 University of California unless the Board of Regents
38 adopts a resolution to that effect.

39 (f) This section shall not be construed to preclude the
40 applicability of any other provision of the criminal law of



1 this state which applies or may apply to any transaction,
2 nor shall it make illegal any employee labor relations
3 activities that are within the scope and protection of state
4 or federal labor laws.

5 (g) Any computer, computer system, computer
6 network, or any software or data, owned by the
7 defendant, that is used during the commission of any
8 public offense described in subdivision (c) or any
9 computer, owned by the defendant, which is used as a
10 repository for the storage of software or data illegally
11 obtained in violation of subdivision (c) shall be subject to
12 forfeiture, as specified in Section 502.01.

13 (h) (1) Subdivision (c) does not apply to any person
14 who accesses his or her employer's computer system,
15 computer network, computer program, or data when
16 acting within the scope of his or her lawful employment.
17 *For the purposes of this paragraph, an employee acts*
18 *within the scope of his or her lawful employment when*
19 *he or she accesses his or her employer's system, computer*
20 *network, computer programs, or data in order to perform*
21 *duties that are within the express or implied authority*
22 *granted by the employer to that employee for the*
23 *performance of his or her work assignment.*

24 (2) Paragraph (3) of subdivision (c) does not apply to
25 any employee who accesses or uses his or her employer's
26 computer system, computer network, computer
27 program, or data when acting outside the scope of his or
28 her lawful employment, so long as the employee's
29 activities do not cause an injury, as defined in paragraph
30 (8) of subdivision (b), to the employer or another, or so
31 long as the value of supplies and computer services, as
32 defined in paragraph (4) of subdivision (b), which are
33 used do not exceed an accumulated total of one hundred
34 dollars (\$100).

35 (i) No activity exempted from prosecution under
36 paragraph (2) of subdivision (h) which incidentally
37 violates paragraph (2), (4), or (7) of subdivision (c) shall
38 be prosecuted under those paragraphs.

39 (j) For purposes of bringing a civil or a criminal action
40 under this section, a person who causes, by any means, the



1 access of a computer, computer system, or computer
2 network in one jurisdiction from another jurisdiction is
3 deemed to have personally accessed the computer,
4 computer system, or computer network in each
5 jurisdiction.

6 (k) In determining the terms and conditions
7 applicable to a person convicted of a violation of this
8 section the court shall consider the following:

9 (1) The court shall consider prohibitions on access to
10 and use of computers.

11 (2) Except as otherwise required by law, the court
12 shall consider alternate sentencing, including community
13 service, if the defendant shows remorse and recognition
14 of the wrongdoing, and an inclination not to repeat the
15 offense.

16 SEC. 3. Section 502.01 of the Penal Code is amended
17 to read:

18 502.01. (a) As used in this section:

19 (1) “Property subject to forfeiture” means any
20 property of the defendant that is illegal
21 telecommunications equipment as defined in subdivision
22 (g) of Section 502.8, or a computer, computer system, or
23 computer network, and any software or data residing
24 thereon, if the telecommunications device, computer,
25 computer system, or computer network was used in
26 committing a violation of *Section 480*, subdivision (c) of
27 Section 502, or Section 502.7 or 502.8, or was used as a
28 repository for the storage of software or data obtained in
29 violation of those provisions. If the defendant is a minor,
30 it also includes property of the parent or guardian of the
31 defendant.

32 (2) “Sentencing court” means the court sentencing a
33 person found guilty of violating *Section 480*, subdivision
34 (c) of Section 502, or Section 502.7 or 502.8, or, in the case
35 of a minor found to be a person described in Section 602
36 of the Welfare and Institutions Code because of a
37 violation of those provisions, the juvenile court.

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



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

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

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

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

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

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

38 A person claiming an interest in the property shall file
39 a motion for the redemption of that interest at least 10
40 days before the hearing on forfeiture, and shall send a



1 copy of the motion to the prosecuting agency and to the
2 probation department.

3 If a motion to redeem an interest has been filed, the
4 sentencing court shall hold a hearing to identify all
5 persons who possess valid interests in the property. No
6 person shall hold a valid interest in the property if, by a
7 preponderance of the evidence, the prosecuting agency
8 shows that the person knew or should have known that
9 the property was being used in violation of *Section 480*,
10 subdivision (c) of *Section 502*, or *Section 502.7* or *502.8*,
11 and that the person did not take reasonable steps to
12 prevent that use, or if the interest is a security interest,
13 the person knew or should have known at the time that
14 the security interest was created that the property would
15 be used for a violation.

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

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

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

23 (3) If the value of the property is greater than the
24 value of the interest, the holder of the interest shall be
25 entitled to ownership of the property upon paying the
26 court the difference between the value of the property
27 and the value of the valid interest.

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

38 (4) If the value of the property is less than the value of
39 the interest, the designated agency shall sell the property



1 and pay the owner of the interest the proceeds, up to the
2 value of that interest.

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

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

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

17 (3) If the minor is convicted of a violation of *Section*
18 *480*, subdivision (c) of *Section 502*, or *Section 502.7* or
19 *502.8* within two years after the date on which the minor
20 is sentenced, and the violation involves a computer or
21 telecommunications device owned by the parent or
22 guardian, the original property subject to forfeiture, and
23 the property involved in the new offense, shall be subject
24 to forfeiture notwithstanding paragraph (2).

25 (f) If the defendant is found to have the only valid
26 interest in the property subject to forfeiture, it shall be
27 distributed as follows:

28 (1) First, to the victim, if the victim elects to take the
29 property as full or partial restitution for injury, victim
30 expenditures, or compensatory damages, as defined in
31 paragraph (1) of subdivision (e) of *Section 502*. If the
32 victim elects to receive the property under this
33 paragraph, the value of the property shall be determined
34 by the court and that amount shall be credited against the
35 restitution owed by the defendant. The victim shall not
36 be penalized for electing not to accept the forfeited
37 property in lieu of full or partial restitution.

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

40 (A) The prosecuting agency.



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

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

5 (D) Other state and local public entities, including
6 school districts.

7 (E) Nonprofit charitable organizations.

8 (g) If the property is to be sold, the court may
9 designate the prosecuting agency or any other agency to
10 sell the property at auction. The proceeds of the sale shall
11 be distributed by the court as follows:

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

16 (2) The balance, if any, to be retained by the court,
17 subject to the provisions for distribution under
18 subdivision (f).

19 SEC. 4. No reimbursement is required by this act
20 pursuant to Section 6 of Article XIII B of the California
21 Constitution because the only costs that may be incurred
22 by a local agency or school district will be incurred
23 because this act creates a new crime or infraction,
24 eliminates a crime or infraction, or changes the penalty
25 for a crime or infraction, within the meaning of Section
26 17556 of the Government Code, or changes the definition
27 of a crime within the meaning of Section 6 of Article
28 XIII B of the California Constitution.

