
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 195 **Hearing Date:** June 9, 2015
Author: Chau
Version: April 6, 2015
Urgency: No **Fiscal:** Yes
Consultant: JM

Subject: *Unauthorized Access to Computer Systems*

HISTORY

Source: Author

Prior Legislation: AB 1642 (Waldron), Chapter 379, Statutes of 2014

Support: Association for Los Angeles Deputy Sheriffs; California College and University Police Chiefs' Association; California District Attorneys Association; California Public Defenders Association; Los Angeles County Board of Supervisors; Los Angeles County District Attorney's Office; Los Angeles County Sheriff's Department; Los Angeles Police Protective League; Riverside Sheriffs Association

Opposition: Legal Services for Prisoners with Children; Electronic Frontier Foundation

Assembly Floor Vote: 75 - 0

PURPOSE

The purposes of this bill are to 1) include specified computer offenses in the list of target crimes in the offense of solicitation of another person to commit a crime; 2) define offering to solicit assistance for a person to violate specified computer crimes as a form of criminal solicitation.

Existing law:

Defines the criminal offense of solicitation of another to commit one of a list of target crimes. (Pen. Code § 653f.) Solicitation involves the following elements, penalties and evidentiary rules:

- Solicitation includes the following elements:
 - The defendant requested or solicited another person to commit the target offense.
 - The defendant intended that the crime be committed.
 - The other person received the solicitation actual words or terms used to encourage someone to commit the crime.

- Solicitation of any one the following offenses is an alternate felony-misdemeanor, punishable by imprisonment in a county jail for up to one year, a fine of up to \$1,000, or both, or, pursuant to Penal Code Section 1170, subdivision (h), to an executed felony jail term of 16 months, 2 or 3 years and a fine of up to \$10,000:
 - Carjacking
 - Robbery
 - Burglary
 - Grand theft and forgery
 - Receiving stolen property
 - Extortion
 - Perjury and subornation of perjury
 - Kidnapping
 - Arson
 - Assault with a deadly weapon or by means of force likely to produce great bodily injury
 - Dissuading a witness by the use of force or a threat of force, upon, or testifying at, any trial, proceeding, or inquiry authorized by law, shall be punished by imprisonment in a county jail for not more than one year, or by a fine of not more than ten thousand dollars (\$10,000), or the amount which could have been assessed for commission of the offense itself, whichever is greater, or by both the fine and imprisonment. Pen. Code § 653f, subd. (a),):
- Solicitation of murder is a felony, punishable by a prison term of three, six or nine years and a fine of up to \$10,000. (Pen. Code § 653f, subd. (b).)
- Solicitation of the commission by force or violence of rape, sodomy, oral copulation, sexual penetration, lewd conduct or a sex crime in concert is a felony, punishable by imprisonment in the state prison for two, three, or four years and a fine of up to \$10,000. (Pen. Code § 653f, subd. (c).)
- Solicitation of specified crimes involving drug commerce is a misdemeanor, punishable by imprisonment in a county jail for up to six months, a fine of up to \$1,000, or both. A subsequent conviction of this offense is an alternate felony-misdemeanor, punishable by imprisonment in a county jail for up to one year, a fine of up to \$1,000, or both, or by exceeding six months. (Pen. Code § 653f, subd. (d).)
- Solicitation of Medi-Cal or health care eligibility fraud is a misdemeanor, punishable by imprisonment in a county jail for up to six months, a fine of up to \$1,000, or both. A subsequent conviction of this offense is an alternate felony-misdemeanor, punishable by imprisonment in a county jail for up to one year, a fine of up to \$1,000, or both, or by exceeding six months. (Pen. Code § 653f, subd. (e).)
- Proof of solicitation of drug commerce requires the testimony of one witness and corroborating evidence. (Pen. Code § 653f, subd. (f).)
- Proof of solicitation of murder, sex crimes, kidnapping, robbery, carjacking, arson, specified financial or theft crimes, assault or dissuading a witness requires the testimony of at least two witnesses and corroborating evidence. (Pen. Code § 653f, subd. (f).)

Defines numerous computer or electronic data offenses and imposes a wide range of penalties based on the seriousness of the offense or extent of harm caused by the defendant by a fine not exceeding \$10,000, by a sentenced felony jail term of 16 months, two years or three years, or both, or as a misdemeanor by a fine not exceeding \$5,000, by imprisonment in a county jail not exceeding one year, or both:

- Any person who knowingly accesses and without permission alters, damages, deletes, destroys, or otherwise uses any data, computer, computer system, or computer network in order to devise or execute any scheme or artifice to defraud, deceive, or extort, or wrongfully control or obtain money, property or data.
- Any person who knowingly accesses and without permission takes, copies or makes use of any data from a computer, computer system, or computer network, or takes or copies any supporting documentation, whether existing or residing internal or external to a computer, computer system, or computer network.
- Any person who knowingly accessing and without permission adds, alters, damages, deletes, or destroys any data, computer software, or computer programs which reside or exist internal or external to a computer, computer system, or computer network.
- Any person who knowingly and without permission disrupting or causing the disruption of computer services or denies or causes the denial of computer services or denies or causes the denial of computer services to an authorized user of a computer, computer system, or computer network.
- Disrupting or improperly accessing a government of public safety computer systems, data or software is separately defined, but subject to the same penalties as other such crimes. (Pen. Code § 502, subs. (c) and (d)(1).)

Provides that any person who knowingly and without permission uses or causes to be used computer services shall be punished as follows:

- For the first violation that does not result in injury, and where the value of the computer services used does not exceed \$950, by a fine not exceeding \$5,000, by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment; and
- For any violation that results in a victim expenditure in an amount more than \$5,000 or in an injury, if the value of the computer services used exceeds \$950, or for any second or subsequent violation, by a fine not exceeding \$10,000, by imprisonment pursuant to realignment for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding \$5,000, by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment. (Pen. Code § 502, subs. (c) and (d)(2).)

Punishes any person who knowingly and without permission provides or assists in providing a means of accessing, accesses, or causes to be accessed a computer, computer system, or computer network as follows:

- For a first violation that does not result in injury, an infraction punishable by a fine not exceeding \$1,000;
- For any violation that results in a victim expenditure in an amount not more than \$5,000, or for a second or subsequent violation, by a fine not exceeding \$5,000, by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment; and
- For any violation that results in a victim expenditure in an amount more than \$5,000, by a fine not exceeding ten thousand dollars \$10,000, by imprisonment pursuant to realignment for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding \$5,000, by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment. (Pen. Code § 502, subs. (c) and (d)(3).)

Punishes any person who knowingly introduces any computer contaminant into any computer, or computer system, or computer network as follows:

- For a first violation that does not result in injury, a misdemeanor punishable by a fine not exceeding \$5,000, by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment; and
- For any violation that results in injury, or for a second or subsequent violation, by a fine not exceeding \$10,000, by imprisonment in a county jail not exceeding one year, or by imprisonment pursuant to realignment, or by both that fine and imprisonment. (Pen. Code § 502 subs. (c) and (d)(4).)

Punishes any person who knowingly and without permission uses the Internet domain name of another individual, corporation, or entity in connection with the sending of one or more electronic mail messages, and thereby damages or causes damage to a computer, computer system, or computer network as follows:

- For a first violation that does not result in injury, an infraction punishable by a fine not more than \$1,000; and
- For any violation that results in injury, or for a second or subsequent violation, by a fine not exceeding five thousand dollars (\$5,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment. (Pen. Code § 502, subs. (c) and (d)(5).)

This bill:

Provides that every person who, with the intent that the crime be committed, solicits another to commit one of a number of specified computer crimes shall be punished by imprisonment in a county jail for a period not to exceed six months. Every subsequent violation of this subdivision by that same person shall be punished by imprisonment in a county jail not exceeding one year.

Provides that every person who, with the intent that the crime be committed, offers to solicit assistance for another to conduct activities in violation of a number of specified computer crimes shall be punished by imprisonment in a county jail for a period not to exceed six months. Every

subsequent violation of this subdivision by that same person shall be punished by imprisonment in a county jail not exceeding one year.

- This offense - offering to solicit assistance for the purpose of committing a computer crime - applies to a person who operates the website that offers to assist others in locating hacking services.
- For purposes of this crime, "hacking services" means assistance in the unauthorized access to computers, computer systems, or computer data in violation of specified computer crimes.

Provides that solicitation of a computer crime, or offering to assist others in committing a computer crime, shall be proved by the testimony of one witness and corroborating evidence.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight years, this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In February of this year the administration reported that as "of February 11, 2015, 112,993 inmates were housed in the State's 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity." (Defendants' February 2015 Status Report In Response To February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).

While significant gains have been made in reducing the prison population, the state now must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;

- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for This Bill

According to the author:

Today, we live in a digitally connected world where our devices are connected to the internet. This includes our phones, cars and appliances; all of which perform functions that were once exclusive to our computers. This new form of digital access has also spawned a new type of criminal, one who can invade our homes by breaking into our computer networks from afar. These cybercrimes range from breaking into someone's computer network to steal financial information to other crimes such as corporate espionage, fraud, and extortion.

Under current law, it is a crime to solicit another to commit certain crimes, such as bribery, kidnapping, and robbery. In addition, it is a crime for someone to knowingly hack into another's computer network without permission. However, it is not a crime to solicit someone to knowingly and without permission hack into a computer network or smartphone.

Cybercrimes have greater and longer lasting effects on victims than many other crimes, because the personal information stolen can result in identify theft, fraud, and personal embarrassment, all of which could take years to recover from, if ever. The FBI's Internet Crime Complaint Center reported that in 2013 it received over 200,000 consumer complaints about online scams, which resulted in a loss of over 781 million dollars; an almost 50% increase from the year before.

We have recently seen the growth of so called Hacker-for-Hire websites. Some of these websites work by requiring a person to submit a description of the hacking job along with contact information. The website then sets up a time to connect the person with a hacker over the phone or video-conferencing. Others websites create a platform for customers to register and post hacker projects for bid. The website then holds the money in an escrow account until the parties agree that the transaction has been completed and takes a commission from each transaction. Hacker-for-Hire projects range from recovering lost passwords to tracking stolen devices. But some of these websites also allow individuals to seek illegal hacking services from less than ethical hackers, such as installing spyware and gaining access to the email and social media accounts of unsuspecting victims.

AB 195 would make it a crime to solicit someone to knowingly and without permission gain access to a computer network or smartphone. This includes offering to obtain or assist in locating hacking services. The bill would also clarify that a computer network includes smartphones. This bill would make any

violation punishable by imprisonment not to exceed six months. Any subsequent violation would be punishable by imprisonment not to exceed one year.

2. Solicitation of a Crime in Contrast with an Attempted Crime

An attempt to commit a crime includes the elements of a specific intent to commit a crime and a direct, but unsuccessful step towards commission of the crime. Mere preparation to commit a crime is not an attempt. Solicitation is the requesting of another person to commit a crime, with the intent that the crime be committed. The crime of solicitation has been committed at that point. The crime need not be committed and the person solicited need not prepare to commit the crime or take steps towards its commission.

3. Argument in Support

According to the California Public Defenders Association:

Existing law establishes various crimes related to computer services and systems. Existing law makes it a crime to knowingly, and without permission, access, cause to be accessed, or provide or assist in providing, a means of accessing a computer, computer system, computer network, or computer data in violation of prescribed provisions and defines related terms...Computing technology has expanded greatly in the last few years. With the introduction of the smartphone, computer technology advanced with a device that is highly portable, yet gives one computing power that heretofore required large, often cumbersome, equipment. Essentially, it put the power of computers into one's pocket. With the proliferation of smartphones, and their ever-growing capabilities, more private data is carried on the person. Given this incredible increase in technology, it only makes sense to include smartphones as devices that can be the target of illicit hacking and data transmission.

4. Argument in Opposition

According to the Electronic Frontier Foundation:

Our primary concern with AB 195 is that it would criminalize the offering of technical assistance in accessing computers or data, which the bill deems to be "hacking services." Such services are often wholly legitimate; as the author himself states, such services include "recovering lost passwords to tracking stolen devices." As written, however, we believe AB 195 makes it very hard to such legitimate services to be offered.

What the statute fails to recognize is the vast array of "hacking services" that are beneficial and indeed critical to the computer security industry. Take for example, so-called "penetration testing" services, also called pen testing. Penetration testing is a procedure where an information security professional is hired to attempt to hack into a network, using the same tools and techniques as a criminal hacker. The resulting report is used, not for crime, but to secure the network. As written, the bill could criminalize linking to sites that offer such services. Although there is an intent requirement, the statutory language specifically calls out a website that "offer[s] to assist others in locating hacking services," which undoubtedly

includes penetration testing. The intent requirement would not prevent a constitutionally impermissible chilling effect on those seeking to list or compare penetration services.

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