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Identity Theft. Criminal Gang Activity. Forensic Computer Analysis Fund. Initiative Statute.

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P.O. Box 8446
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July 15, 2005

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INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Ms. Tricia Knight
Initiative Coordinator
Office of the Attorney General
State of California
PO Box 994255
Sacramento, CA 94244-25550

Re: Request for Title and Summary for proposed initiative

Dear Ms. Knight:

I am submitting the attached proposed ballot initiative, the "California Identity Theft and Personal Information Protection Act," to your office and request you prepare a title and summary of the measure as provided by law. Attached is my address. I have also included a check for \$200 to cover the filing fee.

Sincerely,

Charles S. Poochigian

California Identity Theft and Personal Information Protection Act

SECTION 1. Title.

This Act shall be known as the “California Identity Theft and Personal Information Protection Act.”

SECTION 2. Findings and Declarations.

The People of California find and declare the following:

Identity theft is the fastest-growing crime in the United States. California leads the nation in identity theft crimes, and thousands of Californians are victimized by this practice each month.

Identity thieves steal personal information, such as a credit card number, Social Security number, driver’s license number, or bank account information, and use that information to open fraudulent credit accounts or run up charges on the accounts of innocent victims.

Identity theft can have a devastating long-term impact on victims, who are often forced to work for years and spend thousands of dollars trying to rebuild their credit and clear their names. Existing laws do not adequately protect Californians against identity theft crime.

Financial fraud using identity theft has attracted increasingly organized criminal involvement in the theft and trafficking of personal and financial identifying information. The investigation and prosecution of these crimes is costly and requires specialized training and equipment for law enforcement agencies.

In California, the link between illegal drug use and identity theft is emerging as a significant public safety problem. It is estimated that up to 90% of methamphetamine addicts use identity theft to support their habit.

Even more ominously, some gangs are now mixing identity theft with other more violent criminal activity. Gangs have become increasingly sophisticated and are now using identity theft to help finance their violent criminal activities and narcotics operations.

Therefore, the People of California declare that reform is necessary to win the battle against identity theft. California’s criminal justice statutes must be strengthened to give law enforcement the tools needed to address this epidemic. Punishment for identity theft crimes must be increased, offenses relating to the theft of access cards and personal information must be added to the list of offenses qualifying for a pattern of criminal gang activity, and offenders should be responsible for the financial burden caused by their criminal acts.

SECTION 3. Purpose and Intent.

The purpose of this Act is to strengthen criminal penalties for identity theft, identity trafficking, electronic theft, and the often-related criminal offenses of organized street gangs, and to shift the financial burden from law enforcement to convicted offenders.

SECTION 4.

Section 186.22 of the Penal Code is amended to read:

(a) Any person who actively participates in any criminal street gang with the knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, or two or three years.

(b) (1) Except as provided in paragraphs (4) and (5), any person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished as follows:

(A) Except as provided in subparagraphs (B) and (C), the person shall be punished by an additional term of two, three, or four years at the court's discretion.

(B) If the felony is a serious felony, as defined in subdivision (c) of Section 1192.7, the person shall be punished by an additional term of five years.

(C) If the felony is a violent felony, as defined in subdivision (c) of Section 667.5, the person shall be punished by an additional term of 10 years.

(2) If the underlying felony described in paragraph (1) is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the facility is open for classes or school-related programs or when minors are using the facility that fact shall be a circumstance in aggravation of the crime in imposing a term under paragraph (1).

(3) The court shall order the imposition of the middle term of the sentence enhancement, unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentencing enhancements on the record at the time of the sentencing.

(4) Any person who is convicted of a felony enumerated in this paragraph committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, be sentenced to an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the greater of:

(A) The term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by Section 3046, if the felony is any of the offenses enumerated in subparagraphs (B) or (C) of this paragraph.

(B) Imprisonment in the state prison for 15 years, if the felony is a home invasion robbery, in violation of subparagraph (A) of paragraph (1) of subdivision (a) of Section 213; carjacking, as defined in Section 215; a felony violation of Section 246; or a violation of Section 12022.55.

(C) Imprisonment in the state prison for seven years, if the felony is extortion, as defined in Section 519; or threats to victims and witnesses, as defined in Section 136.1.

(5) Except as provided in paragraph (4), any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life, shall not be paroled until a minimum of 15 calendar years have been served.

(c) If the court grants probation or suspends the execution of sentence imposed upon the defendant for a violation of subdivision (a), or in cases involving a true finding of the enhancement enumerated in subdivision (b), the court shall require that the defendant serve a minimum of 180 days in a county jail as a condition thereof.

(d) Any person who is convicted of a public offense punishable as a felony or a misdemeanor, which is committed for the benefit of, at the direction of or in association with, any criminal street gang with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison for one, two, or three years, provided that any person sentenced to imprisonment in the county jail shall be imprisoned for a period not to exceed one year, but not less than 180 days, and shall not be eligible for release upon completion of sentence, parole, or any other basis, until he or she has served 180 days. If the court grants probation or suspends the execution of sentence imposed upon the defendant, it shall require as a condition thereof that the defendant serve 180 days in a county jail.

(e) As used in this chapter, "pattern of criminal gang activity" means the commission of, attempted commission of, conspiracy to commit, or solicitation of, sustained juvenile petition for, or conviction of two or more of the following offenses, provided at least one of these offenses occurred after the effective date of this chapter and the last of those offenses occurred within three years after a prior offense, and the offenses were committed on separate occasions, or by two or more persons:

(1) Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Section 245.

(2) Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8 of Part 1.

(3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1.

(4) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances as defined in Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code.

(5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in Section 246.

(6) Discharging or permitting the discharge of a firearm from a motor vehicle, as defined in subdivisions (a) and (b) of Section 12034.

(7) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

(8) The intimidation of witnesses ~~and~~ or victims, as defined in Section 136.1.

(9) Grand theft, as defined in subdivision (a) or (c) of Section 487.

(10) Grand theft of any firearm, vehicle, trailer, or vessel.

(11) Burglary, as defined in Section 459.

(12) Rape, as defined in Section 261.

(13) Looting, as defined in Section 463.

- (14) Money laundering, as defined in Section 186.10.
- (15) Kidnapping, as defined in Section 207.
- (16) Mayhem, as defined in Section 203.
- (17) Aggravated mayhem, as defined in Section 205.
- (18) Torture, as defined in Section 206.
- (19) Felony extortion, as defined in Sections 518 and 520.
- (20) Felony vandalism, as defined in paragraph (1) of subdivision (b) of

Section 594.

- (21) Carjacking, as defined in Section 215.
- (22) The sale, delivery, or transfer of a firearm, as defined in Section 12072.
- (23) Possession of a pistol, revolver, or other firearm capable of being concealed upon the person in violation of paragraph (1) of subdivision (a) of Section 12101.
- (24) Threats to commit crimes resulting in death or great bodily injury, as defined in Section 422.
- (25) Theft and unlawful taking or driving of a vehicle, as defined in Section 10851 of the Vehicle Code.
- (26) Theft, as defined in Section 484e.
- (27) Forgery, as defined in Section 484f or 484i.
- (28) Fraud, as defined in Section 484g.
- (29) Department of Motor Vehicles document fraud, as defined in Section

529.7.

- (30) Identity theft, as defined in Section 530.5.

(f) As used in this chapter, "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to ~~(25)~~ (30), inclusive, of subdivision (e), having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(g) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(h) Notwithstanding any other provision of law, for each person committed to the Youth Authority for a conviction pursuant to subdivision (a) or (b) of this section, the offense shall be deemed one for which the state shall pay the rate of 100 percent of the per capita institutional cost of the Department of Youth Authority, pursuant to Section 912.5 of the Welfare and Institutions Code.

(i) In order to secure a conviction, or sustain a juvenile petition, pursuant to subdivision (a), it is not necessary for the prosecution to prove that the person devotes all, or a substantial part of his or her time or efforts to the criminal street gang, nor is it necessary to prove that the person is a member of the criminal street gang. Active participation in the criminal street gang is all that is required.

SECTION 5.

Section 529 of the Penal Code is amended to read:

Every person who falsely personates another in either his private or official capacity, and in such assumed character either:

- 1- (a) Becomes bail or surety for any party in any proceeding whatever, before any court or officer authorized to take such bail or surety;
- 2- (b) Verifies, publishes, acknowledges, or proves, in the name of another person, any written instrument, with intent that the same may be recorded, delivered, or used as true; or,
- 3- (c) Does any other act whereby, if done by the person falsely personated, he might, in any event, become liable to any arrest, criminal charge, suit, or prosecution, or to pay any sum of money, or to incur any charge, forfeiture, or penalty, or whereby any benefit might accrue to the party personating, or to any other person;

Is punishable by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment in the state prison, or in a county jail not exceeding one year, or by both such fine and imprisonment.

SECTION 6.

Section 530.5 of the Penal Code is amended to read:

(a) Every person who willfully obtains personal identifying information, as defined in subdivision (b) of Section 540, of another person, and uses that information for any unlawful purpose, including to obtain, or attempt to obtain, credit, goods, services, real property, or medical information ~~in the name of the other person~~ without the consent of that person, is guilty of a public offense, and upon conviction therefor, shall be punished either by imprisonment in a county jail not to exceed one year, a fine not to exceed one thousand dollars (\$1,000), or both that imprisonment and fine, or by imprisonment in the state prison, a fine not to exceed ten thousand dollars (\$10,000), or both that imprisonment and fine.

~~(b) "Personal identifying information," as used in this section, means the name, address, telephone number, health insurance identification number, taxpayer identification number, school identification number, state or federal driver's license number, or identification number, social security number, place of employment, employee identification number, mother's maiden name, demand deposit account number, savings account number, checking account number, PIN (personal identification number) or password, alien registration number, government passport number, date of birth, unique biometric data including fingerprint, facial scan identifiers, voice print, retina or iris image, or other unique physical representation, unique electronic data including identification number, address, or routing code, telecommunication identifying information or access device, information contained in a birth or death certificate, or credit card number of an individual person.~~

(e) (b) In any case in which a person willfully obtains personal identifying information of another person, uses that information to commit a crime in addition to a violation of subdivision (a), and is convicted of that crime, the court records shall reflect that the person whose identity was falsely used to commit the crime did not commit the crime.

~~(d) Every person who, with the intent to defraud, acquires, transfers, or retains possession of the personal identifying information, as defined in subdivision (b), of another person is guilty of a public offense, and upon conviction therefor, shall be punished by~~

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

(c) Every person who, with the intent to defraud, acquires, sells, transfers, conveys or retains possession of personal identifying information, as defined in subdivision (b) of Section 540, of another person is guilty of a public offense, and shall be punished as follows:

(1) If the personal identifying information is from fewer than 10 persons, either imprisonment in a county jail not to exceed one year, or by imprisonment in the state prison, and a fine not to exceed one thousand dollars (\$1,000) for each person.

(2) If the personal identifying information is from at least 10 persons but fewer than 50 persons, imprisonment in the state prison, and a fine not to exceed one thousand dollars (\$1,000) for each person.

(3) If the personal identifying information is from at least 50 persons but fewer than 500 persons, imprisonment in the state prison for two, three, or five years, and a fine not to exceed one thousand dollars (\$1,000) for each person.

(4) If the personal identifying information is from 500 or more persons, imprisonment in the state prison for three, five, or seven years, and a fine not to exceed one thousand dollars (\$1,000) for each person.

(d) Every person convicted of a felony violation of, or conspiracy to violate, this section shall receive, in addition to any other punishment authorized by law, including Section 667.5, a full, separate, and consecutive term of imprisonment in the state prison for two years for each prior conviction of a felony violation of this section or Section 484e, 484f, 484g, 484i, 487, 496, 529, or 532, including any conviction for conspiracy to violate the listed sections. It is not required that the prior conviction resulted in a term of imprisonment.

(e) Every person who commits a felony violation of this section shall receive, in addition to any other punishment authorized by law, a full separate, and consecutive term of imprisonment in the state prison for one year for each violation, if either of the following circumstances apply:

(1) The crime was committed against a person under the age of 18 or an elder or dependent adult as defined in subdivisions (g) and (h) of Section 368, and the victim's age was known or should have been known to the person.

(2) The crime was committed against a person engaged in the uniformed services, as defined in subdivision (c) of Section 28000 of the Education Code, and the victim's service was known or should have been known to the person.

(f) The enhancements provided in this section shall be pleaded and proven as provided by law.

(g) A prior conviction from another jurisdiction for an offense that, if committed in California, would be an offense under the provisions of this section, shall qualify as a prior conviction for the purpose of applying the sentence enhancements provided by this section.

(h) Notwithstanding any other provisions of law, nothing shall prohibit a person who believes he or she possesses personal identifying information that has been unlawfully used by another, as described in Section 530.5, from disclosing the personal identifying information and related records when:

(1) The disclosure is necessary to report to law enforcement the commission of a crime; or

(2) The disclosure is requested by law enforcement for the purpose of investigating a violation of this chapter; or

(3) The disclosure is requested by a victim.

(i) Nothing in this Act shall require disclosure of personal identifying information in accordance with subdivision (h) of Section 530.5 of the Penal Code. Nothing in this Act, upon disclosure, shall affect any existing civil immunity provision as provided for in Section 47 of the Civil Code or any other provision of law.

SECTION 7.

Section 530.6 of the Penal Code is amended to read:

(a) A person who has learned or reasonably suspects that his or her personal identifying information has been unlawfully used by another, as described in subdivision (a) of Section 530.5, may initiate a law enforcement investigation by contacting the local law enforcement agency that has jurisdiction over his or her actual residence or place of business, which shall take a police report of the matter, provide the complainant with a copy of that report, and begin an investigation of the facts. If the suspected crime was committed in a different jurisdiction, the local law enforcement agency may refer the matter to the law enforcement agency where the suspected crime was committed for further investigation of the facts.

(b) A person who reasonably believes that he or she is the victim of identity theft may petition a court, or the court, on its own motion or upon application of the prosecuting attorney, may move, for an expedited judicial determination of his or her factual innocence, where the perpetrator of the identity theft was arrested for, cited for, or convicted of a crime under the victim's identity, or where a criminal complaint has been filed against the perpetrator in the victim's name, or where the victim's identity has been mistakenly associated with a record of criminal conviction. Any judicial determination of factual innocence made pursuant to this section may be heard and determined upon declarations, affidavits, police reports, or other material, relevant, and reliable information submitted by the parties or ordered to be part of the record by the court. Where the court determines that the petition or motion is meritorious and that there is no reasonable cause to believe that the victim committed the offense for which the perpetrator of the identity theft was arrested, cited, convicted, or subject to a criminal complaint in the victim's name, or that the victim's identity has been mistakenly associated with a record of criminal conviction, the court shall find the victim factually innocent of that offense. If the victim is found factually innocent, the court shall issue an order certifying this determination.

(c) After a court has issued a determination of factual innocence pursuant to this section, the court may order the name and associated personal identifying information contained in court records, files, and indexes accessible by the public deleted, sealed, or labeled to show that the data is impersonated and does not reflect the defendant's identity.

(d) A court that has issued a determination of factual innocence pursuant to this section may at any time vacate that determination if the petition, or any information submitted in support of the petition, is found to contain any material misrepresentation or fraud.

(e) The Judicial Council of California shall develop a form for use in issuing an order pursuant to this section.

SECTION 8.

Section 540 is added to the Penal Code to read:

(a) For purposes of this chapter, "person" means a natural person, living or deceased, firm, association, organization, partnership, business trust, company, corporation, limited liability company, or public entity, or any other legal entity.

(b) For purposes of this chapter, "personal identifying information" means either:

(1) Any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual person, by name, address, telephone number, health insurance identification number, taxpayer identification number, school identification number, state or federal driver's license number, or identification number, social security number, place of employment, employee identification number, professional or occupational license number, mother's maiden name, demand deposit account number, savings account number, checking account number, PIN (personal identification number) or password, alien registration number, government passport number, date of birth, unique biometric data including fingerprint, facial scan identifiers, voice print, retina or iris image, or other unique physical representation, electronic data including identification number assigned to the person, address, or routing code, telecommunication identifying information or access device, information contained in a birth or death certificate, or credit card number of an individual person; or

(2) Any other identifying information that uniquely describes a person.

SECTION 9.

Section 541 is added to the Penal Code to read:

(a) In addition to any other fine, restitution fine or order of restitution, the following persons shall be required to pay a forensic computer laboratory analysis fee in the amount of two hundred and fifty dollars (\$250):

(1) Every person who is convicted of a violation of Section 484e, 484f, 484g, 484i, 487, 496, 529, 530.5, or 532. The court shall increase the total fine necessary to include this increment.

(2) Any person ordered by any court for any offense not included specifically in this section if the court finds at the time of conviction or sentencing that the person committed a high-technology related offense primarily through the use of a computer. The court shall state on the record the reasons for its findings and the reasons for requiring the laboratory fee and shall increase the total fine necessary to include this increment.

(b) The county treasurer shall maintain a forensic computer analysis fund. The sum of two hundred and fifty dollars (\$250) shall be deposited into the fund for every conviction listed in subdivision (a) of this section, in addition to fines, forfeitures, and other moneys that are transmitted by the courts to the county treasurer pursuant to Section 1463.001. The county may retain an amount of this money equal to its administrative cost incurred pursuant to this section not to exceed 5 percent. Moneys in the forensic computer analysis fund shall be used exclusively to fund (1) costs incurred by forensic laboratories providing computer forensic analysis or other analysis of electronic or computer evidence in connection with criminal investigations conducted within both the incorporated and unincorporated portions of the county, (2) the purchase and maintenance of equipment for use by these laboratories in performing the analyses, and (3) continuing education, training, and development of computer forensic analysis for analysts regularly employed by these laboratories. Moneys in the forensic computer analysis

fund shall be in addition to any allocations pursuant to existing law. As used in this section, "forensics laboratory" means a laboratory operated by, or under contract with, a city, county, or other public agency, including a forensic laboratory of the Department of Justice.

SECTION 10.

Section 786 of the Penal Code is amended to read:

(a) When property taken in one jurisdictional territory by burglary, carjacking, robbery, theft, or embezzlement has been brought into another, or when property is received in one jurisdictional territory with the knowledge that it has been stolen or embezzled and the property was stolen or embezzled in another jurisdictional territory, the jurisdiction of the offense is in any competent court within either jurisdictional territory, or any contiguous jurisdictional territory if the arrest is made within the contiguous territory, the prosecution secures on the record the defendant's knowing, voluntary, and intelligent waiver of the right of vicinage, and the defendant is charged with one or more property crimes in the arresting territory.

(b) (1) The jurisdiction of a criminal action for any violation of unauthorized use of personal identifying information, as defined in Section 530.5 of the Penal Code, and for any crime properly joinable with a violation of Section 530.5, shall also include the county where the theft of the personal identifying information occurred, the county in which the victim resided at the time the offense was committed, or the county where the information was used for an illegal purpose. If multiple offenses of unauthorized use of personal identifying information, all involving the same defendant or defendants and the same personal identifying information belonging to the one person, occur in multiple jurisdictions, any one of those jurisdictions is a proper jurisdiction for all of the offenses.

(2) When charges alleging multiple offenses of unauthorized use of personal identifying information occurring in multiple territorial jurisdictions are filed in one county pursuant to this section, the court shall hold a hearing to consider whether the matter should proceed in the county of filing, or whether one or more counts should be severed. The district attorney filing the complaint shall present evidence to the court that the district attorney in each county where any of the charges could have been filed has agreed that the matter should proceed in the county of filing. In determining whether all counts in the complaint should be joined in one county for prosecution, the court shall consider the location and complexity of the likely evidence, where the majority of the offenses occurred, the rights of the defendant and the people, and the convenience of, or hardship to, the victim and witnesses.

(c) This section shall not be interpreted to alter victims' rights under Section 530.6.

SECTION 11.

Section 1203.051 is added to the Penal Code to read:

(a) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any person convicted of a felony violation of Section 530.5 who has one or more previous felony convictions for a violation of that section.

(b) When probation is granted, the court shall specify on the record and shall enter in the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

SECTION 12. Intent.

It is the intent of the people of the State of California in enacting this measure that if any provision in this Act conflicts with another section of law that provides for a greater penalty or longer period of imprisonment that the latter provision shall apply.

SECTION 13. Amendment.

The provisions of this Act may be amended by a statute that is passed by a two-thirds vote of each house of the Legislature and signed by the Governor so long as such amendments are consistent with and further the intent of this Act. In any judicial action with respect to any legislative amendment, the court shall exercise its independent judgment as to whether or not the amendment satisfies the requirements of this subsection.

SECTION 14 Severability.

If any provision of this Act or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the Act that can be given effect in the absence of the invalid provision or application. To this end, the provisions of this Act are severable.

SECTION 15 Conflicts.

In the event that this measure and another measure or measures relating to identity theft shall appear on the same statewide election ballot, the provisions of the other measure or measures shall be deemed in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the other measure shall be null and void.