

## Cal Pen Code § 502.01

Deering's California Codes are current through the 2024 Regular Session Ch 1

*Deering's California Codes Annotated > PENAL CODE (§§ 1 — 34400) > Part 1 Of Crimes and Punishments (Titles 1 — 17) > Title 13 Of Crimes Against Property (Chs. 1 — 15) > Chapter 5 Larceny (§§ 484 — 502.9)*

### **§ 502.01. Forfeiture of telecommunications and computer property used in committing specified crimes; Hearing; Claim of interest in property; Distribution of proceeds**

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(a) As used in this section:

(1) “Property subject to forfeiture” means any property of the defendant that is illegal telecommunications equipment as defined in subdivision (g) of Section 502.8, or a computer, computer system, or computer network, and any software or data residing thereon, if the telecommunications device, computer, computer system, or computer network was used in committing a violation of, or conspiracy to commit a violation of, subdivision (b) of Section 272, Section 288, 288.2, 311.1, 311.2, 311.3, 311.4, 311.5, 311.10, 311.11, 422, 470, 470a, 472, 475, 476, 480, 483.5, 484g, or subdivision (a), (b), or (d) of Section 484e, subdivision (a) of Section 484f, subdivision (b) or (c) of Section 484i, subdivision (c) of Section 502, or Section 502.7, 502.8, 529, 529a, or 530.5, 537e, 593d, 593e, 646.9, or subdivision (j) of Section 647, or was used as a repository for the storage of software or data obtained in violation of those provisions. Forfeiture shall not be available for any property used solely in the commission of an infraction. If the defendant is a minor, it also includes property of the parent or guardian of the defendant.

(2) “Sentencing court” means the court sentencing a person found guilty of violating or conspiring to commit a violation of subdivision (b) of Section 272, Section 288, 288.2, 311.1, 311.2, 311.3, 311.4, 311.5, 311.10, 311.11, 422, 470, 470a, 472, 475, 476, 480, 483.5, 484g, or subdivision (a), (b), or (d) of Section 484e, subdivision (d) of Section 484e, subdivision (a) of Section 484f, subdivision (b) or (c) of Section 484i, subdivision (c) of Section 502, or Section 502.7, 502.8, 529, 529a, 530.5, 537e, 593d, 593e, 646.9, or subdivision (j) of Section 647, or, in the case of a minor, found to be a person described in Section 602 of the Welfare and Institutions Code because of a violation of those provisions, the juvenile court.

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

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

(5) “Value” has the following meanings:

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

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

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

**(c)**

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

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

**(3)** If a motion to redeem an interest has been filed, the sentencing court shall hold a hearing to identify all persons who possess valid interests in the property. No person shall hold a valid interest in the property if, by a preponderance of the evidence, the prosecuting agency shows that the person knew or should have known that the property was being used in violation of, or conspiracy to commit a violation of, subdivision (b) of Section 272, Section 288, 288.2, 311.1, 311.2, 311.3, 311.4, 311.5, 311.10, 311.11, 470, 470a, 472, 475, 476, 480, 483.5, 484g, or subdivision (a), (b), or (d) of Section 484e, subdivision (a) of Section 484f, subdivision (b) or (c) of Section 484i, subdivision (c) of Section 502, or Section 502.7, 502.8, 529, 529a, 530.5, 537e, 593d, 593e, 646.9, or subdivision (j) of Section 647, and that the person did not take reasonable steps to prevent that use, or if the interest is a security interest, the person knew or should have known at the time that the security interest was created that the property would be used for a violation.

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

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

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

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

If the holder of the interest declines to pay the amount determined under paragraph (2), the court may order the property sold and designate the prosecutor or any other agency to sell the property. The designated agency shall be entitled to seize the property and the holder of the interest shall forward any documentation underlying the interest, including any ownership certificates for that property, to the designated agency. The designated agency

shall sell the property and pay the owner of the interest the proceeds, up to the value of that interest.

- (4) If the value of the property is less than the value of the interest, the designated agency shall sell the property and pay the owner of the interest the proceeds, up to the value of that interest.
- (e) If the defendant was a minor at the time of the offense, this subdivision shall apply to property subject to forfeiture that is the property of the parent or guardian of the minor.
- (1) The prosecuting agency shall notify the parent or guardian of the forfeiture hearing at least 30 days before the date set for the hearing.
- (2) The computer or telecommunications device shall not be subject to forfeiture if the parent or guardian files a signed statement with the court at least 10 days before the date set for the hearing that the minor shall not have access to any computer or telecommunications device owned by the parent or guardian for two years after the date on which the minor is sentenced.
- (3) If the minor is convicted of a violation of Section 288, 288.2, 311.1, 311.2, 311.3, 311.4, 311.5, 311.10, 311.11, 470, 470a, 472, 476, 480, or subdivision (b) of Section 484e, subdivision (d) of Section 484e, subdivision (a) of Section 484f, subdivision (b) of Section 484i, subdivision (c) of Section 502, or Section 502.7, 502.8, 529, 529a, 530.5, or subdivision (j) of Section 647, within two years after the date on which the minor is sentenced, and the violation involves a computer or telecommunications device owned by the parent or guardian, the original property subject to forfeiture, and the property involved in the new offense, shall be subject to forfeiture notwithstanding paragraph (2).
- (4) Notwithstanding paragraph (1), (2), or (3), or any other provision of this chapter, if a minor's parent or guardian makes full restitution to the victim of a crime enumerated in this chapter in an amount or manner determined by the court, the forfeiture provisions of this chapter do not apply to the property of that parent or guardian if the property was located in the family's primary residence during the commission of the crime.
- (f) Notwithstanding any other provision of this chapter, the court may exercise its discretion to deny forfeiture where the court finds that the convicted defendant, or minor adjudicated to come within the jurisdiction of the juvenile court, is not likely to use the property otherwise subject to forfeiture for future illegal acts.
- (g) If the defendant is found to have the only valid interest in the property subject to forfeiture, it shall be distributed as follows:
- (1) First, to the victim, if the victim elects to take the property as full or partial restitution for injury, victim expenditures, or compensatory damages, as defined in paragraph (1) of subdivision (e) of Section 502. If the victim elects to receive the property under this paragraph, the value of the property shall be determined by the court and that amount shall be credited against the restitution owed by the defendant. The victim shall not be penalized for electing not to accept the forfeited property in lieu of full or partial restitution.
- (2) Second, at the discretion of the court, to one or more of the following agencies or entities:
- (A) The prosecuting agency.
- (B) The public entity of which the prosecuting agency is a part.
- (C) The public entity whose officers or employees conducted the investigation resulting in forfeiture.
- (D) Other state and local public entities, including school districts.

**(E) Nonprofit charitable organizations.**

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

- (1)** To the bona fide or innocent purchaser or encumbrancer, conditional sales vendor, or mortgagee of the property up to the amount of his or her interest in the property, if the court orders a distribution to that person.
- (2)** The balance, if any, to be retained by the court, subject to the provisions for distribution under subdivision (g).

## History

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Added Stats 1989 ch 1357 § 2. Amended Stats 1990 ch 22 § 1 (AB 1858); Stats 1996 ch 861 § 3 (SB 1558); Stats 1997 ch 906 § 1 (SB 438); Stats 1998 ch 555 § 1 (SB 1734), effective January 1, 1999; Stats 1999 ch 254 § 4 (AB 451); Stats 2000 ch 628 § 1 (AB 1767); Stats 2004 ch 751 § 1 (AB 1499); Stats 2005 ch 22 § 148 (SB 1108), ch 461 § 2 (AB 33), effective January 1, 2006 (ch 461 prevails); Stats 2015 ch 291 § 1 (SB 676), effective January 1, 2016.

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