

2009 CALIFORNIA IDENTITY THEFT MATRIX¹
Some overlooked or underused statutes

Crime Title	P.C. § ²	Punishment ³	Elements ⁴
False Personation	529	Wobbler <u>M – 1yr, \$10,000</u> <u>F – 16/2/3,</u> <u>\$10,000</u>	<ul style="list-style-type: none"> ◆ Falsely personates another⁵ in either his or her private or official capacity; ◆ In such assumed character either: <ul style="list-style-type: none"> - Becomes bail or surety in court for any party; or - Verifies, publishes, acknowledges, or proves, in the name of another person, and written instrument, with the intent that the same may be recorded, delivered, or used as true; or - Does any act⁶ where the person falsely impersonated may become liable to any suit or prosecution, or pay any sum of money, or to incur any charge, forfeiture, or penalty, or whereby any benefit might accrue to the defendant or to another person.⁷
Unauthorized use of personal identifying information	530.5(a)	Wobbler <u>M – 1yr, \$1,000</u> <u>F – 16/2/3,</u> <u>\$10,000</u>	<ul style="list-style-type: none"> ◆ Willfully obtains; ◆ Personal identifying information (PII) of another person⁸; (<i>Note: see page 10 of this guide for definition of “PII”</i>) ◆ And uses that information for any unlawful purpose; <ul style="list-style-type: none"> - Unlawful purpose includes to obtain, or attempt to obtain, credit, goods, service, or medical information ◆ Without the consent of that person.

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² All references are to the Penal Code unless otherwise noted.

³ **M** = Misdemeanor; **F**= Felony.

⁴ Omitted from the elements are the terms “every person” or “any person” unless the statute modifies or expands on this element. The definition of “person” includes “natural persons” and “corporations.” (Penal Code § 7.)

⁵ The term “another,” contemplates impersonation of real, actual, or even deceased as opposed to fictitious, person. (*Lee v. Superior Court* (2000) 22 Cal.4th 41.)

⁶ “Does any act” requires an *additional* act of false personation that exposes the victim to criminal liability beyond a false statement of identification (See *People v. Chardon* (1999) 77 Cal.App.4th 205, 211 [after falsely identifying herself defendant committed the additional act of signing her sister’s name to the citation’s promise to appear].)

⁷ No requirement exists that defendant must have specific intent to cause described liability or benefit. (*People v. Rathert* (2000) 24 Cal.4th 200.)

⁸ For purposes of Penal Code § 530.5 a “person” includes “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.” (Pen. Code, § 530.55 (a).)

Unauthorized possession of personal identifying information	530.5(c)(1)	<u>M – 1yr, \$1,000</u>	<ul style="list-style-type: none"> ◆ With the intent to defraud; ◆ Acquires, or retains possession of; ◆ Personal identifying information (PII) of another person. <i>(Note: see page 10 of this guide for definition of “PII”)</i>
Unauthorized possession of personal identifying information with prior conviction	530.5(c)(2)	Wobbler <u>M – 1yr, \$1,000</u> <u>F – 16/2/3,</u> <u>\$10,000</u>	<ul style="list-style-type: none"> ◆ With the intent to defraud; ◆ Acquires, or retains possession of; ◆ Personal identifying information (PII) of another person; ◆ Previously convicted of Penal Code § 530.5. <i>(Note: see page 10 of this guide for definition of “PII”)</i>
Unauthorized possession of personal identifying information of 10 or more persons	530.5(c)(3)	Wobbler <u>M – 1yr, \$1,000</u> <u>F – 16/2/3,</u> <u>\$10,000</u>	<ul style="list-style-type: none"> ◆ With the intent to defraud; ◆ Acquires, or retains possession of; ◆ Personal identifying information (PII) of; ◆ 10 or more other persons. <i>(Note: see page 10 of this guide for definition of “PII”)</i>
Unauthorized sale or transfer of personal identifying information	530.5(d)(1)	Wobbler <u>M – 1yr, \$1,000</u> <u>F – 16/2/3,</u> <u>\$10,000</u>	<ul style="list-style-type: none"> ◆ With the intent to defraud; ◆ Sells, transfers, or conveys; ◆ Personal identifying information (PII) of another person. <i>(Note: see page 10 of this guide for definition of “PII”)</i>
Unauthorized sale or transfer of personal identifying information knowing that it will be used for ID theft	530.5(d)(2)	<u>F – 16/2/3,</u> <u>\$10,000</u>	<ul style="list-style-type: none"> ◆ With actual knowledge; ◆ That the personal identifying information (PII) of another person; ◆ Will be used to commit a violation of Penal Code § 530.5 (a); ◆ Sells, transfers, or conveys that same information. <i>(Note: see page 10 of this guide for definition of “PII”)</i>
Injury to mail or mail receptacles ⁹	530.5(e)	<u>M – 1yr, \$1,000</u>	<ul style="list-style-type: none"> ◆ Willfully or maliciously; ◆ Injures, tears down, destroys; or <ul style="list-style-type: none"> - Any letter box or other receptacle intended or used for the receipt or delivery of mail on any mail route, or breaks open the same ◆ Defaces or destroys any mail deposited therein.

⁹ Note charging violations under Penal Code section 530.5 (e) does not bar prosecution under other statutes. (Pen. Code § 530.5 (e).)

False pretenses; obtaining money, labor, or property	532(a)	<u>M – 180 days</u> <u>\$1,000</u> <u>F – 16/2/3,</u> Punishable as the same extent as larceny for the money or property obtained	<ul style="list-style-type: none"> ◆ Knowingly and designedly; ◆ By any false or fraudulent representation or pretense; ◆ Defrauds any other person; ◆ Of money, labor, or property (real or personal).
False pretenses; obtaining credit	532(a)	<u>M – 180 days</u> <u>\$1,000</u> <u>F – 16/2/3,</u> <u>\$10,000</u> Punishable as the same extent as larceny for the money or property obtained	<ul style="list-style-type: none"> ◆ Knowingly and designedly; ◆ Cause or procures others to report falsely of his or her wealth; ◆ Thus imposing upon any person and obtains credit; ◆ Fraudulently gets possession of money or property or obtains the labor or service of another.
False Financial Statements	532a	Wobbler <u>M – One year</u> <u>\$2,500</u> <u>F – 16/2/3 \$5,000</u>	<ul style="list-style-type: none"> ◆ Knowingly make or caused to be made; ◆ Directly or indirectly or through any agency; ◆ Any false statement in writing; ◆ With the intent that it shall be relied upon; ◆ Respecting the means or ability to pay; ◆ For the purpose of procuring personal property, payment of cash, loan, credit, extension of credit; ◆ By using a fictitious name, SSN, business name, or business address, or falsely represents himself to be another person or business.
Sale or transfer of access card or account information ¹⁰	484e (a)	Wobbler <u>M – One year</u> <u>\$1,000</u> <u>F – 16/2/3</u> <u>\$10,000</u>	<ul style="list-style-type: none"> ◆ With the intent to defraud¹¹; ◆ Sells, transfers, or conveys, an access card; ◆ Without the cardholder's or issuers consent. (Note: see page 10 of this guide for definition of "access card")

¹⁰ Note charging violations under Penal Code section 484d et seq. does not bar prosecution under other statutes. (See, e.g., *People v. Butler* (1996) 43 Cal.App.4th 1224, 1242-1243.)

¹¹ Crime of possession of access card account information with a fraudulent intent does not require that the information actually be used or that the account of an innocent consumer actually be charged or billed. (*People v. Molina* (2004) 120 Cal.App.4th 507.)

Possession of access card or account information ¹²	484e (c)	Wobbler <u>M – 180 days</u> <u>\$1,000</u>	<ul style="list-style-type: none"> ◆ With the intent to defraud; ◆ Acquires or retains possession or an access card; ◆ Without the cardholders or issuer's consent; ◆ With the intent to use, sell, or transfer it to a person other than the cardholder or issuer. <p><i>(Note: see page 10 of this guide for definition of "access card")</i></p>
Possession of validly issued access card or account information ¹³	484e (d)	Wobbler <u>M – One year</u> <u>\$1,000</u> <u>F – 16/2/3</u> <u>\$10,000</u>	<ul style="list-style-type: none"> ◆ With the intent to use it fraudulently; ◆ Acquires or retains possession of access card account information; ◆ With respect to an access card validly issued¹⁴ to another person; ◆ Without the cardholders or issuer's consent. <p><i>(Note: see page 10 of this guide for definition of "access card")</i></p>
Acquire access card or account information over 12 month period ¹⁵	484e (b)	Wobbler <u>M – One year</u> <u>\$1,000</u> <u>F – 16/2/3</u> <u>\$10,000</u>	<ul style="list-style-type: none"> ◆ Within any consecutive 12-month period ◆ Acquires access cards issued in the names of four or more persons; ◆ Which he or she believes were taken in violation Penal Code § 484e (a), (c), or (d). <p><i>(Note: see page 10 of this guide for definition of "access card")</i></p>
Forgery of access card	484f	Wobbler <u>M – One year</u> <u>\$1,000</u> <u>F – 16/2/3</u> <u>\$10,000</u>	<ul style="list-style-type: none"> ◆ With the intent to defraud; ◆ Designs, makes, alter, or embosses a counterfeit access card. <p><i>(Note: see page 10 of this guide for definition of "access card")</i></p>

¹² Consecutive sentencing is permissible for the offenses of receiving stolen property (Pen. Code, § 496) and acquiring credit cards to be used illegally (Pen. Code, § 484e) where defendant kept stolen credit cards over an extended period of time with the intent to use them. (*People v. Rowland* (1971) 21 Cal.App.3d 371.)

¹³ Two cloned cellular phones possessed by defendant were considered separate violations of the statute. (*People v. Butler, supra*, 43 Cal.App.4th 1224.)

¹⁴ The term validly issued to another does not require that card be currently valid and is merely descriptive of the kinds of cards coming within the definition, which may include expired or cancelled cards. (*People v. Molina* (2004) 120 Cal.App.4th 507.)

¹⁵ Charging Pen. Code, § 484e (b) will only allows a single conviction for a defendant even though there are separate victims. (*See People v. Shabtay* (2006) 138 Cal.App.4th 1184.)

Attempted use of forged access card	484f	Wobbler <u>M – One year</u> <u>\$1,000</u> <u>F – 16/2/3</u> <u>\$10,000</u>	<ul style="list-style-type: none"> ◆ With the intent to defraud; ◆ Utters or attempts to use a counterfeit access card. <i>(Note: see page 10 of this guide for definition of “access card”)</i>
Use of forged access card	484f	Wobbler <u>M – One year</u> <u>\$1,000</u> <u>F – 16/2/3</u> <u>\$10,000</u>	<ul style="list-style-type: none"> ◆ With the intent to defraud; ◆ Signs the name of another or of a fictitious person; ◆ To an access card, sales slip, sales draft, or instrument for the payment of money that evidences an access card transaction. <i>(Note: see page 10 of this guide for definition of “access card”)</i>
Use of forged, expired, or revoked access card	484g	Wobbler <u>M – One year</u> <u>\$1,000</u> <u>F – 16/2/3</u> <u>\$10,000</u> Punishable as the same extent as grand theft if loss exceeds \$400 in any consecutive six-month period.	<ul style="list-style-type: none"> ◆ With the intent to defraud; ◆ Uses for purpose of obtaining money, goods, services, or anything else of value; ◆ An access card or access card account information; ◆ That has been: <ul style="list-style-type: none"> - Forged, expired, or revoked; or - Altered, obtained, or retained in violation of Pen. Code §§ 484e or 484f; or - Obtains money, good, services, or anything else of value by representing without the consent of the cardholder that he or she is the holder of the access card and the card has not in fact been issued. <i>(Note: see page 10 of this guide for definition of “access card”)</i>
Furnishing things of value upon presentation of unauthorized access card	484h (a)	Wobbler <u>M – One year</u> <u>\$1,000</u> <u>F – 16/2/3</u> <u>\$10,000</u> Punishable as the same extent as grand theft if loss exceeds \$400 in any consecutive six-month period.	<ul style="list-style-type: none"> ◆ Every retailer or other person with the intent to defraud; ◆ Furnishes money, goods, or services, or anything else of value; ◆ Upon presentation of an access card: <ul style="list-style-type: none"> - Obtained or retained in violation of Penal Code § 484e; or - Which he or she knows is counterfeit, forged, expired, or revoked and receives any payment therefor. <i>(Note: see page 10 of this guide for definition of “access card”)</i>

Falsely presenting evidence of access card transaction	484h (b)	Wobbler <u>M – One year</u> <u>\$1,000</u> <u>F – 16/2/3</u> <u>\$10,000</u> Punishable as the same extent as grand theft if loss exceeds \$400 in any consecutive six-month period.	<ul style="list-style-type: none"> ◆ Every retailer or other person with the intent to defraud; ◆ Presents for payment a sales slip or other evidence of an access card transaction; and ◆ Receives payment; ◆ Without providing money, goods, or services or anything else of value that is equal in value to the amount of the sales slip or other evidence of an access card transaction. <p><i>(note: see page 10 of this guide for definition of "access card")</i></p>
Possession of incomplete access cards	484i (a)	<u>M – 180 days</u> <u>\$1,000</u>	<ul style="list-style-type: none"> ◆ Possesses an incomplete access card; ◆ With the intent to complete it; ◆ Without the consent of the issuer <p><i>(Note: see page 10 of this guide for definition of "access card")</i></p>
Forgery or modification of access cards	484i (b)	Wobbler <u>M – One year</u> <u>\$1,000</u> <u>F – 16/2/3</u> <u>\$10,000</u>	<ul style="list-style-type: none"> ◆ With the intent to defraud; ◆ Makes, alters, varies, changes, or modifies; or authorizes another to alter or modify; <ul style="list-style-type: none"> - Alteration includes encoded magnetic strip information, or - Other medium not directly readable by the human eye ◆ Access account information on any part of the access card; ◆ In a manner that causes transactions initiated by that access card to be charged to a person other than the cardholder to whom the access card was issued. <p><i>(Note: see page 10 of this guide for definition of "access card")</i></p>
Equipment and incomplete counterfeit access cards	484i (c)	Wobbler <u>M – One year</u> <u>\$1,000</u> <u>F – 16/2/3</u> <u>\$10,000</u>	<ul style="list-style-type: none"> ◆ Designs, makes, possess, or traffics; ◆ In card making equipment or incomplete access cards; ◆ With the intent that the equipment or cards be used to make counterfeit access cards. <p><i>(Note: see page 10 of this guide for definition of "access card")</i></p>
Forgery or counterfeiting seals	472	Wobbler <u>M – One year</u> <u>\$1,000</u> <u>F – 16/2/3</u> <u>\$10,000</u>	<ul style="list-style-type: none"> ◆ With the intent to defraud another¹⁶; ◆ Forges, counterfeits, or falsely makes, forges, or counterfeits any impression of a; ◆ Seal of the State, of any public officer authorized by law, or any court of record, or any corporation, or any other public seal authorized or recognized by any other State, Government, or country.

¹⁶ Making virtually any kind of false document affords an inference that the maker intends to deceive someone. (*People v. Castellanos* (2003) 110 Cal.App.4th 1489.)

Possession of counterfeited seals	472	Wobbler <u>M – One year</u> <u>\$1,000</u> <u>F – 16/2/3</u> <u>\$10,000</u>	<ul style="list-style-type: none"> ◆ Who has in his possession any; ◆ Seal of the State, of any public officer authorized by law, or any court of record, or any corporation, or any other public seal authorized or recognized by any other State, Government, or country; ◆ Knowing it to be counterfeited and willfully conceals the same.
Furnishing deceptive identification documents	483.5 (a)	Wobbler <u>M – One year</u> <u>\$1,000</u> <u>F – 16/2/3</u> <u>\$10,000</u>	<ul style="list-style-type: none"> ◆ No deceptive identification document; <ul style="list-style-type: none"> - “Deceptive identification document” includes any document not issued by any governmental agency that purports to be or might deceive an ordinary reasonable person into believing that it was issued by such an agency. - Documents include but are not limited to driver’s license, identification card, birth certificate, passport, or social security card. ◆ Shall be manufactured, sold, offered for sale, furnished, offered to be furnished, transported, offered to be transported or imported or offered to be imported in this state; ◆ Unless there is diagonally printed across the case of the document in not less than 14-point type ‘NOT A GOVERNMENT DOCUMENT” in permanent ink and the name of the manufacturer.
Forgery or falsification of driver’s license ¹⁷	Vehicle Code § 4463 (a)	Wobbler <u>M – One year</u> <u>F – 16/2/3</u>	<ul style="list-style-type: none"> ◆ With intent to prejudice, damage, or defraud¹⁸, commits any of the following acts: <ul style="list-style-type: none"> - Alters, forges, counterfeits, or falsifies any . . . license, . . . or permit provided for by this code or any comparable . . . , license, . . . provided for by any foreign jurisdiction; or - Alters, forges, counterfeits, or falsifies the document, device, or plate with intent to represent it as issued by the department; or - Have in his or her possession any blank, incomplete, canceled, suspended, revoked, altered, forged, counterfeit, . . . license, . . . or permit. - Utters, publishes, passes, or attempts to pass, as true and genuine, any false, altered, forged, or counterfeited matter listed in subdivision (a) knowing it to be false, altered, forged, or counterfeited.

¹⁷ *People v. Superior Court* (1972) 6 Cal.3d 704 [prosecution for possession of forged or altered driver’s license]; *People v. Stone* (1961) 195 Cal.App.2d 282 [prosecution for possession of forged or altered driver’s license].

¹⁸ Making virtually any kind of false document affords an inference that the maker intends to deceive someone. (*People v. Castellanos* (2003) 110 Cal.App.4th 1489.)

Forgery of driver's license or identification card	470a	Wobbler <u>M – One year</u> <u>\$1,000</u> <u>F – 16/2/3</u> <u>\$10,000</u>	<ul style="list-style-type: none"> ◆ Alters, falsifies, forgers, duplicates or in any manner reproduces or counterfeits; ◆ Any driver's license or identification card issued by a government agency; ◆ With the intent that it be used to facilitate the commission of a forgery.
Display or possession of forged driver's license or identification card	470b	Wobbler <u>M – One year</u> <u>\$1,000</u> <u>F – 16/2/3</u> <u>\$10,000</u>	<ul style="list-style-type: none"> ◆ Displays or causes or permits to be displayed or has in his possession; ◆ Any driver's license or identification card of the type enumerated in Penal Code § 470a; ◆ With the intent that it be used to facilitate the commission of a forgery.
Crimes against the elderly or dependent adults	368 (d)	Wobbler <u>M – One year</u> <u>\$1,000</u> <u>F – 2/3/4 \$1,000</u> Punishable as a felony if money, labor, goods, services, or real or personal property taken or obtained exceeds \$400.	<ul style="list-style-type: none"> ◆ Any person who is not a caretaker; ◆ Who violate any provision of law proscribing theft, embezzlement, forgery, fraud, or identity theft; ◆ With respect to property or personal information of an elder or dependant adult; <ul style="list-style-type: none"> - "Elder" is any person who is 65 years of age or older - "Dependant adult" includes any person between the ages of 18 and 64 who has physical or mental limitations which restricts ability to carry out normal activities or to protect his of her rights. ◆ Who knows or reasonably should know that the victim is an elder or dependent adult.
Obtaining telephone or other public utility records by fraud	538.5	Wobbler <u>M – One year</u> <u>\$1,000</u> <u>F – 16/2/3</u> <u>\$10,000</u>	<ul style="list-style-type: none"> ◆ Transmits by means of wire, radio, or television communication; ◆ Any words, sounds, writings, sign, signals, or pictures; ◆ For the purpose of furthering or executing a scheme or artifice ◆ To obtain from a public utility¹⁹; ◆ Confidential, privileged, or proprietary information; <ul style="list-style-type: none"> - including trade secrets, trade list, customer records, billing records, customer credit data, or accounting data ◆ By means of false or fraudulent pretenses, representations, personations, or promises

¹⁹ California Public Utility Code Section 216 defines "Public utility" as including "every common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, and heat corporation, where the service is performed for, or the commodity is delivered to, the public or any portion thereof."

Purchasing or obtaining by deceit call records	638	<u>M – One year</u> <u>\$2,500</u>	<ul style="list-style-type: none"> ◆ Purchases, sells, offers to purchase or sell, or conspires to purchase or sell or who procures or obtains through fraud or deceit, or attempts to procure or obtain through fraud or deceit; ◆ Any telephone calling pattern record or list, ◆ Without the written consent of the subscriber.
Business solicitations using government terms or symbols	B&P 17533.6(a) 17534	<u>M- Six months</u> <u>\$1,000</u>	<ul style="list-style-type: none"> ◆ Unlawful for any person, firm, corporation, or association; ◆ That is not a governmental entity; ◆ To solicit information, the purchase or payment for a product or service, or to solicit the contribution of funds or membership fees; ◆ By means of a mailing, electronic message, or Internet Web site that contains a seal, insignia, trade or brand name, or any other term or symbol that reasonably could be interpreted or construed as implying any state or local government connection, approval, or endorsement; ◆ unless the following requirements of met: <ul style="list-style-type: none"> (1) The nongovernmental entity has an expressed connection with, or the approval or endorsement of, a state or local government entity, if permitted by other provisions of law. (2) The solicitation states: "THIS PRODUCT OR SERVICE HAS NOT BEEN APPROVED OR ENDORSED BY ANY GOVERNMENT AGENCY, AND THIS OFFER IS NOT BEING MADE BY AN AGENCY OF THE GOVERNMENT." (2) The mailing states: "THIS IS NOT A GOVERNMENT DOCUMENT."
Publication of information describing or depicting a child with intent that information be used to commit a crime against the child	273i	<u>M- One year</u> <u>\$1,000</u>	<ul style="list-style-type: none"> ◆ Publishes²⁰ information²¹ ; ◆ Describing or depicting a child²², the physical appearance of a child, or the location of a child; ◆ With the intent that another person imminently use the information to commit a crime against a child; ◆ Information is likely to aid in the imminent commission of a crime against a child.

²⁰ "Publishes" means making the information available to another person through any medium, including . . . the internet . . . or e-mail. (Pen. Code, § 273i (b).)

²¹ "Information" includes, but is not limited to, an image, film . . . videotape . . . or any other computer-generated image. (Pen. Code, § 273i (d).)

²² "Child" means a person who is 14 years of age or younger. (Pen. Code, § 273i (c).)

<p>Definition: Personal identifying information (PII)</p>	<p>530.55 (b)</p>		<ul style="list-style-type: none"> ◆ "any name, address, telephone number, health insurance number, taxpayer identification number, school identification number, state or federal driver's license, or identification number, social security number, place of employment, employee identification number, professional or occupational 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, voiceprint, retina or iris image, or other unique physical representation, unique electronic data including information 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 an equivalent form of identification."
<p>Definition: Access Card</p>	<p>484d (2)</p>		<ul style="list-style-type: none"> ◆ "any card, plate, code, account number, or other means of account access that can be used, alone or in conjunction with another access card, to obtain money, goods, services, or any other thing of value, or that can be used to initiate a transfer of funds, other than a transfer originated solely by a paper instrument."