S T A T E O F N E W Y O R K

5083

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sen. LEIBELL -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to establishing definitions pertaining to offenses involving computers, establishing the crimes of computer intrusion in the third degree, computer intrusion in the second degree, computer intrusion in the first degree, aggravated computer intrusion, use of a minor in the commission of a computer offense, and cyberterrorism; to amend the criminal procedure law, in relation to making certain technical corrections thereto; and repealing certain provisions of such laws relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Sections 156.00, 156.05, 156.10, 156.20, 156.25, 156.26, 156.27 and 156.50 of the penal law are REPEALED.

S 2. The penal law is amended by adding a new section 156.00 to read as follows:

S 156.00 OFFENSES INVOLVING COMPUTERS; DEFINITION OF TERMS.

THE FOLLOWING DEFINITIONS ARE APPLICABLE TO THIS CHAPTER EXCEPT WHERE DIFFERENT MEANINGS ARE EXPRESSLY SPECIFIED:

1. "COMPUTER" MEANS A DEVICE OR GROUP OF DEVICES WHICH, BY MANIPULATION OF ELECTRONIC, MAGNETIC, OPTICAL OR ELECTROCHEMICAL IMPULSES, PURSUANT TO A COMPUTER PROGRAM, CAN AUTOMATICALLY PERFORM ARITHMETIC, LOGICAL, STORAGE OR RETRIEVAL OPERATIONS WITH OR ON COMPUTER DATA, AND INCLUDES ANY CONNECTED OR DIRECTLY RELATED DEVICE, EQUIPMENT OR FACILITY WHICH ENABLES SUCH COMPUTER TO STORE, RETRIEVE OR COMMUNICATE TO OR FROM A PERSON, ANOTHER COMPUTER OR ANOTHER DEVICE THE RESULTS OF COMPUTER OPERATIONS, COMPUTER PROGRAMS OR COMPUTER DATA.

2. "COMPUTER DATA" IS PROPERTY AND MEANS A REPRESENTATION OF INFORMATION, KNOWLEDGE, FACTS, CONCEPTS OR INSTRUCTIONS WHICH ARE BEING PROCESSED, OR HAVE BEEN PROCESSED IN A COMPUTER AND MAY BE IN ANY FORM,

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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INCLUDING MAGNETIC STORAGE MEDIA, PUNCHED CARDS, OR STORED INTERNALLY IN THE MEMORY OF THE COMPUTER.

3. "DATA NETWORK" MEANS A COMPUTER SYSTEM THAT PROVIDES COMMUNICATIONS BETWEEN ONE OR MORE COMPUTER SYSTEMS AND ITS INPUT OR OUTPUT DEVICES, INCLUDING, BUT NOT LIMITED TO, DISPLAY TERMINALS THAT ARE INTERCONNECTED.

4. "COMPUTER SOFTWARE OR COMPUTER APPLICATION" MEANS A SET OF INSTRUCTIONS OR STATEMENTS AND RELATED DATA WHICH, WHEN EXECUTED IN ACTUAL OR MODIFIED FORM, CAUSE A COMPUTER, COMPUTER SYSTEM, OR DATA NETWORK TO PERFORM SPECIFIED FUNCTIONS.

5. "COMPUTER OPERATING SYSTEM" MEANS A COMPUTER PROGRAM THAT CONTROLS INTERNAL AND EXTERNAL COMPUTER SOFTWARE OR COMPUTER APPLICATIONS, THAT MAY BE USED TO EXECUTE OTHER COMPUTER PROGRAMS, GENERATE OUTPUT IN THE FORM OF VISUAL, PRINT OR STORAGE MEDIA, OR TO CONTROL PERIPHERAL COMPUTER DEVICES.

6. "COMPUTER MATERIAL" IS PROPERTY AND MEANS ANY COMPUTER DATA OR COMPUTER PROGRAM WHICH:

(A) CONTAINS RECORDS OF THE MEDICAL HISTORY OR MEDICAL TREATMENT OF AN IDENTIFIED OR READILY IDENTIFIABLE INDIVIDUAL OR INDIVIDUALS. THIS TERM SHALL NOT APPLY TO THE GAINING ACCESS TO OR DUPLICATION SOLELY OF THE MEDICAL HISTORY OR MEDICAL TREATMENT RECORDS OF A PERSON BY THAT PERSON OR BY ANOTHER PERSON SPECIFICALLY AUTHORIZED BY THE PERSON WHOSE RECORDS ARE GAINED ACCESS TO OR DUPLICATED; OR

(B) CONTAINS RECORDS MAINTAINED BY THE STATE OR ANY POLITICAL SUBDIVISION THEREOF OR ANY GOVERNMENTAL INSTRUMENTALITY WITHIN THE STATE WHICH CONTAINS ANY INFORMATION CONCERNING A PERSON WHICH BECAUSE OF NAME, NUMBER, SYMBOL, MARK OR OTHER IDENTIFIER, CAN BE USED TO IDENTIFY THE PERSON AND WHICH IS OTHERWISE PROHIBITED BY LAW FROM BEING DISCLOSED. THIS TERM SHALL NOT APPLY TO THE GAINING ACCESS TO OR DUPLICATION SOLELY OF RECORDS OF A PERSON BY THAT PERSON OR BY ANOTHER PERSON SPECIFICALLY AUTHORIZED BY THE PERSON WHOSE RECORDS ARE GAINED ACCESS TO OR DUPLICATED; OR

(C) CONTAINS THE FINANCIAL INFORMATION OF A PERSON. THIS TERM SHALL NOT APPLY TO THE GAINING ACCESS TO OR DUPLICATION SOLELY OF RECORDS OF A PERSON BY THAT PERSON OR BY ANOTHER PERSON SPECIFICALLY AUTHORIZED BY THE PERSON WHOSE RECORDS ARE GAINED ACCESS TO OR DUPLICATED; OR

(D) IS NOT AND IS NOT INTENDED TO BE AVAILABLE TO ANYONE OTHER THAN THE PERSON OR PERSONS RIGHTFULLY IN POSSESSION THEREOF OR SELECTED PERSONS HAVING ACCESS THERETO WITH HIS, HER OR THEIR CONSENT AND WHICH ACCORDS OR MAY ACCORD SUCH RIGHTFUL POSSESSORS AN ADVANTAGE OVER COMPETITORS OR OTHER PERSONS WHO DO NOT HAVE KNOWLEDGE OR THE BENEFIT THEREOF.

7. "COMPUTER EXPLOIT" MEANS A COMPUTER PROGRAM OR SET OF COMPUTER INSTRUCTIONS DESIGNED TO MODIFY, DAMAGE, DESTROY, RECORD OR TRANSMIT INFORMATION WITHIN A COMPUTER, COMPUTER SYSTEM OR DATA NETWORK WITHOUT THE INTENT OR PERMISSION OF THE OWNER OF THE INFORMATION OR OF THE COMPUTER, COMPUTER SYSTEM OR DATA NETWORK. THIS INCLUDES, BUT IS NOT LIMITED TO, INTRUSIONS KNOWN AS MALICIOUS CODES, VIRUSES OR WORMS WHICH MAY BE SELF-REPLICATING OR SELF-PROPAGATING AND WHICH ARE DESIGNED TO CONTAMINATE OTHER COMPUTERS, COMPUTER APPLICATIONS, COMPUTER SYSTEMS OR COMPUTER DATA NETWORKS; CONSUME COMPUTER RESOURCES; MODIFY, DESTROY, RECORD, OR TRANSMIT DATA; OR IN SOME OTHER FASHION USURP THE NORMAL OPERATION OF THE COMPUTER, COMPUTER APPLICATION, COMPUTER SYSTEM, OR DATA NETWORK.

8. "COMPUTER SYSTEM" MEANS A GROUP OF ONE OR MORE COMPUTERS LINKED TOGETHER WITH THE ABILITY TO SHARE INFORMATION AND RESOURCES.

9. "COMPUTER PROGRAM" IS PROPERTY AND MEANS AN ORDERED SET OF DATA REPRESENTING CODED INSTRUCTIONS OR STATEMENTS THAT, WHEN EXECUTED BY A COMPUTER, CAUSES THE COMPUTER TO PROCESS DATA OR DIRECT THE COMPUTER TO PERFORM ONE OR MORE COMPUTER OPERATIONS OR BOTH AND MAY BE IN ANY FORM.

10. "COMPUTER SERVICE" MEANS ANY AND ALL SERVICES PROVIDED BY OR THROUGH THE FACILITIES OF ANY COMPUTER, DATA NETWORK, APPLICATION OR OPERATING SYSTEM ALLOWING THE INPUT, OUTPUT, EXAMINATION, OR TRANSFER, OF COMPUTER DATA OR COMPUTER PROGRAM FROM ONE COMPUTER TO ANOTHER.

11. "PERIPHERAL COMPUTER DEVICE" MEANS A DEVICE DIRECTLY CONNECTED TO A COMPUTER OR INDIRECTLY THROUGH A DATA NETWORK.

12. "PATCH" MEANS A SOFTWARE OR APPLICATION UPDATE DISTRIBUTED BY THE COMPUTER SOFTWARE MAKER DESIGNED TO FIX A VULNERABILITY IN COMPUTER SOFTWARE OR COMPUTER APPLICATION.

S 3. The penal law is amended by adding a new section 156.05 to read as follows:

S 156.05 COMPUTER INTRUSION IN THE THIRD DEGREE.

A PERSON IS GUILTY OF COMPUTER INTRUSION IN THE THIRD DEGREE WHEN HE OR SHE DIRECTLY OR INDIRECTLY:

1. WILLFULLY, KNOWINGLY AND WITHOUT AUTHORIZATION MODIFIES, DESTROYS, ACCESSES OR DISCLOSES APPLICATIONS OR SUPPORTING DOCUMENTATION RESIDING OR EXISTING INTERNALLY OR EXTERNALLY TO A COMPUTER OR COMPUTER SYSTEM OR DATA NETWORK; OR

2. WILLFULLY, KNOWINGLY AND WITHOUT AUTHORIZATION INSTALLS A COMPUTER APPLICATION OR SOFTWARE; OR

3. WILLFULLY, KNOWINGLY AND WITHOUT AUTHORIZATION, DIRECTLY OR INDIRECTLY, USES A COMPUTER, COMPUTER OPERATING SYSTEM, DATA NETWORK OR PERIPHERAL COMPUTER DEVICE CONNECTED THROUGH A DATA NETWORK; OR

4. WILLFULLY AND KNOWINGLY COMMITS A DENIAL OF SERVICE ATTACK. FOR THE PURPOSES OF THIS SECTION, "DENIAL OF SERVICE ATTACK" MEANS PREVENTING AUTHORIZED ACCESS TO COMPUTER RESOURCES OR DELAYING TIME CRITICAL COMPUTER OPERATIONS BY INUNDATING OR OTHERWISE OVERLOADING A DATA NETWORK, OR ATTEMPTING TO INUNDATE OR OTHERWISE OVERLOAD A COMPUTER SERVICE.

COMPUTER INTRUSION IN THE THIRD DEGREE IS A CLASS A MISDEMEANOR.

S 4. The penal law is amended by adding a new section 156.10 to read as follows:

S 156.10 COMPUTER INTRUSION IN THE SECOND DEGREE.

A PERSON IS GUILTY OF COMPUTER INTRUSION IN THE SECOND DEGREE WHEN HE OR SHE COMMITS COMPUTER INTRUSION IN THE THIRD DEGREE AND:

1. HE OR SHE HAS PREVIOUSLY BEEN CONVICTED OF ANY CRIME UNDER THIS ARTICLE; OR

2. HE OR SHE INTENTIONALLY AND WITHOUT AUTHORIZATION ALTERS IN ANY MANNER OR DESTROYS COMPUTER MATERIAL, AS DEFINED IN SECTION 156.00 OF THIS ARTICLE; OR

3. HE OR SHE DOES SO WITH THE INTENT TO COMMIT OR FURTHER THE COMMISSION OF ANY FELONY; OR

4. HE OR SHE CAUSES DAMAGES AS A RESULT OF THE COMPUTER INTRUSION IN AN AGGREGATE AMOUNT EXCEEDING TWENTY-FIVE HUNDRED DOLLARS.

COMPUTER INTRUSION IN THE SECOND DEGREE IS A CLASS E FELONY.

S 5. The penal law is amended by adding a new section 156.20 to read as follows:

S 156.20 COMPUTER INTRUSION IN THE FIRST DEGREE.

A PERSON IS GUILTY OF COMPUTER INTRUSION IN THE FIRST DEGREE WHEN HE OR SHE COMMITS THE CRIME OF COMPUTER INTRUSION IN THE THIRD DEGREE SO AS TO CAUSE DAMAGES AS A RESULT OF THE COMPUTER INTRUSION IN AN AGGREGATE AMOUNT EXCEEDING TEN THOUSAND DOLLARS.

COMPUTER INTRUSION IN THE FIRST DEGREE IS A CLASS D FELONY.

S 6. The penal law is amended by adding a new section 156.25 to read as follows:

S 156.25 AGGRAVATED COMPUTER INTRUSION.

A PERSON IS GUILTY OF AGGRAVATED COMPUTER INTRUSION WHEN HE OR SHE COMMITS THE CRIME OF COMPUTER INTRUSION IN THE THIRD DEGREE AND IN FURTHERANCE OF SUCH CRIME HE OR SHE:

1. ENCRYPTS A COMPUTER EXPLOIT OR DELETERIOUS SET OF INSTRUCTIONS IN AN IMAGE OR COMPUTER FILE; OR

2. DEVELOPS A COMPUTER EXPLOIT THAT MODIFIES THE COMPUTER, COMPUTER SYSTEM, OR COMPUTER OPERATING SYSTEM SO THAT A COMPUTER USER IS UNABLE TO REPAIR THE MODIFICATION; OR

3. DEVELOPS A COMPUTER EXPLOIT THAT USES A PATCH DEVELOPED BY A SOFTWARE COMPANY TO TARGET A COMPUTER, COMPUTER SYSTEM, COMPUTER PROGRAM, DATA NETWORK, COMPUTER SERVICE OR COMPUTER OPERATING SYSTEM TO TARGET AND EXPLOIT A VULNERABILITY IN THE COMPUTER OPERATING SYSTEM OR COMPUTER PROGRAM.

AGGRAVATED COMPUTER INTRUSION IS A CLASS E FELONY.

S 7. The penal law is amended by adding a new section 156.40 to read as follows:

S 156.40 USE OF A MINOR IN THE COMMISSION OF A COMPUTER OFFENSE.

A PERSON IS GUILTY OF USE OF A MINOR IN THE COMMISSION OF A COMPUTER OFFENSE WHEN, BEING EIGHTEEN YEARS OF AGE OR OLDER, HE OR SHE USES A CHILD UNDER THE AGE OF EIGHTEEN TO EFFECTUATE THE COMMISSION OF ANY COMPUTER OFFENSE UNDER THIS ARTICLE BY:

1. INFLUENCING OR COERCING THE CHILD TO COMMIT THE COMPUTER OFFENSE; OR

2. INTENTIONALLY OR WILLFULLY SUPPLIES THE CHILD WITH THE INFORMATION NECESSARY TO COMMIT THE COMPUTER OFFENSE WITH THE KNOWLEDGE THAT THE CHILD INTENDS TO COMMIT A COMPUTER OFFENSE.

USE OF A MINOR IN THE COMMISSION OF A COMPUTER OFFENSE IS A CLASS E FELONY.

S 8. The penal law is amended by adding a new section 156.50 to read as follows:

S 156.50 OFFENSES INVOLVING COMPUTERS; DEFENSES.

UNDER SECTIONS 156.05, 156.10, 156.20, 156.25, AND 156.40 OF THIS ARTICLE IT SHALL BE A DEFENSE THAT THE DEFENDANT WAS AUTHORIZED TO USE THE COMPUTER PURSUANT TO A SERVICE AGREEMENT AND WHERE SUCH USE ORIGINATED FROM A SERVICE LOCATION WITHIN THE UNITED STATES OR CANADA.

S 9. Section 490.05 of the penal law is amended by adding a new subdivision 18 to read as follows:

18. "ACT OF CYBERTERRORISM" MEANS THE USE OF COMPUTING RESOURCES INCLUDING BUT NOT LIMITED TO COMPUTERS, COMPUTER SYSTEMS, DATA NETWORKS, COMPUTER SOFTWARE, COMPUTER APPLICATIONS AND COMPUTER OPERATING SYSTEMS AS SUCH TERMS ARE DEFINED IN SECTION 156.00 OF THIS CHAPTER, AGAINST PERSONS OR PROPERTY TO INTIMIDATE OR COERCE A GOVERNMENT, THE POPULATION, OR ANY SEGMENT THEREOF, IN FURTHERANCE OF POLITICAL OR SOCIAL OBJECTIVES.

S 10. The penal law is amended by adding a new section 490.28 to read as follows:

S 490.28 CYBERTERRORISM.

A PERSON IS GUILTY OF CYBERTERRORISM WHEN, WITH THE INTENT TO INTIMIDATE A CIVILIAN POPULATION, INFLUENCE THE POLICY OF A UNIT OF GOVERNMENT BY INTIMIDATION OR COERCION, OR AFFECT THE CONDUCT OF A UNIT OF GOVERNMENT, HE OR SHE COMMITS ANY OF THE CRIMES CONTAINED WITHIN ARTICLE ONE HUNDRED FIFTY-SIX OF THIS CHAPTER DIRECTED AGAINST ANY COMPUTER,

COMPUTER SYSTEM OR DATA NETWORK OWNED OR OPERATED BY A LOCAL, STATE OR FEDERAL GOVERNMENT ENTITY, ANY UTILITY INCLUDING BUT NOT LIMITED TO, ANY ELECTRIC OR WATER UTILITY, OR A FINANCIAL INSTITUTION.

CYBERTERRORISM IS A CLASS B FELONY.

S 11. Paragraphs (j) and (k) of subdivision 1 of section 240.20 of the criminal procedure law, paragraph (j) as added by chapter 514 of the laws of 1986 and paragraph (k) as added by chapter 536 of the laws of 1989, are amended to read as follows:

(j) In [any prosecution under penal law section 156.05 or 156.10, the time, place and manner of notice given pursuant to subdivision six of section 156.00 of such law.

(k) in] any prosecution commenced in a manner set forth in this subdivision alleging a violation of the vehicle and traffic law, in addition to any material required to be disclosed pursuant to this article, any other provision of law, or the constitution of this state or of the United States, any written report or document, or portion thereof, concerning a physical examination, a scientific test or experiment, including the most recent record of inspection, or calibration or repair of machines or instruments utilized to perform such scientific tests or experiments and the certification certificate, if any, held by the operator of the machine or instrument, which tests or examinations were made by or at the request or direction of a public servant engaged in law enforcement activity or which was made by a person whom the prosecutor intends to call as a witness at trial, or which the people intend to introduce at trial.

S 12. Section 250.30 of the criminal procedure law is REPEALED.

S 13. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.