

8149--A

2015-2016 Regular Sessions

I N A S S E M B L Y

June 10, 2015

Introduced by M. of A. LENTOL, MONTESANO -- read once and referred to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law and the criminal procedure law, in relation to cyber crimes

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

1 Section 1. Subdivisions 1, 2, 3 and 4 of section 155.00 of the penal  
2 law, subdivision 1 as amended by chapter 514 of the laws of 1986, are  
3 amended and two new subdivisions 10 and 11 are added to read as follows:  
4 1. "Property" means any money, personal property, real property,  
5 computer data, computer program, PERSONAL IDENTIFYING INFORMATION,  
6 SECRET SCIENTIFIC MATERIAL, thing in action, evidence of debt or  
7 contract, or any article, substance or thing of value, including any  
8 gas, steam, water or electricity, which is provided for a charge or  
9 compensation.  
10 2. "Obtain" includes, but is not limited to, the bringing about of a  
11 transfer or purported transfer of property or of a legal interest there-  
12 in, whether to the obtainer or another. WITH REGARD TO PERSONAL IDENTI-  
13 FYING INFORMATION, COMPUTER DATA OR COMPUTER PROGRAM, OBTAIN INCLUDES  
14 DUPLICATING, RECORDING, COPYING, DOWNLOADING, UPLOADING OR PRINTING OUT  
15 THE INFORMATION, DATA, OR PROGRAM, OR OBTAINING A PHYSICAL OBJECT  
16 CONTAINING SUCH INFORMATION. WITH REGARD TO SERVICE, OBTAIN INCLUDES,  
17 BUT IS NOT LIMITED TO, USING OR ACCESSING A SERVICE.  
18 3. "Deprive." To "deprive" another of property means (a) to withhold  
19 it or cause it to be withheld from him OR HER permanently or for so  
20 extended a period or under such circumstances that the major portion of  
21 its economic value or benefit is lost to him OR HER, or (b) to dispose  
22 of the property in such manner or under such circumstances as to render  
23 it unlikely that an owner will recover such property. WHEN THE PROPERTY  
24 IS PERSONAL IDENTIFYING INFORMATION, COMPUTER DATA OR COMPUTER PROGRAM,  
25 TO DEPRIVE ANOTHER OF ITS MEANS TO OBTAIN IT OR CAUSE A THIRD PERSON TO

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

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1 OBTAIN IT UNDER SUCH CIRCUMSTANCES THAT A SUBSTANTIAL PORTION OF THE  
2 ECONOMIC BENEFIT OR VALUE OF HAVING CONTROL OVER IT OR AUTHORITY OVER  
3 ITS USE IS LOST TO AN OWNER. TO DEPRIVE ANOTHER OF SERVICE IS TO USE OR  
4 ACCESS A SERVICE OR CAUSE A THIRD PERSON TO USE OR ACCESS A SERVICE  
5 UNDER SUCH CIRCUMSTANCES THAT SOME OF THE ECONOMIC BENEFIT OR VALUE OF  
6 HAVING CONTROL OR AUTHORITY OVER PROVIDING THE SERVICE IS LOST TO AN  
7 OWNER.

8 4. "Appropriate." To "appropriate" property of another to oneself or a  
9 third person means (a) to exercise control over it, or to aid a third  
10 person to exercise control over it, permanently or for so extended a  
11 period or under such circumstances as to acquire the major portion of  
12 its economic value or benefit, or (b) to dispose of the property for the  
13 benefit of oneself or a third person. WHEN THE PROPERTY IS PERSONAL  
14 IDENTIFYING INFORMATION, COMPUTER DATA OR COMPUTER PROGRAM OF ANOTHER,  
15 TO APPROPRIATE IT TO ONESELF OR A THIRD PERSON MEANS TO OBTAIN IT UNDER  
16 SUCH CIRCUMSTANCES AS TO ACQUIRE THE ABILITY TO USE IT OR DISPOSE OF IT  
17 TO THE ECONOMIC BENEFIT OF ONESELF OR A THIRD PERSON OR TO THE ECONOMIC  
18 DETRIMENT OR DAMAGE OF AN OWNER. TO APPROPRIATE A SERVICE PROVIDED BY  
19 ANOTHER TO ONESELF OR A THIRD PERSON MEANS TO USE OR ACCESS THE SERVICE  
20 UNDER SUCH CIRCUMSTANCES AS TO ACQUIRE THE ABILITY TO USE IT TO THE  
21 ECONOMIC BENEFIT OF ONESELF OR A THIRD PERSON OR TO THE ECONOMIC DETRI-  
22 MENT OR DAMAGE OF AN OWNER.

23 10. "COMPUTER PROGRAM" MEANS AN ORDERED SET OF DATA REPRESENTING CODED  
24 INSTRUCTIONS OR STATEMENTS THAT WHEN EXECUTED BY THE COMPUTER, CAUSE THE  
25 COMPUTER TO PROCESS DATA OR DIRECT THE COMPUTER TO PERFORM ONE OR MORE  
26 COMPUTER OPERATIONS OR BOTH AND MAY BE IN ANY FORM, INCLUDING MAGNETIC  
27 STORAGE MEDIA, OPTICAL MEDIA, COMPUTING DEVICES, PUNCHED CARDS, OR  
28 STORED INTERNALLY IN THE MEMORY OF THE COMPUTER.

29 11. "COMPUTER DATA" MEANS A REPRESENTATION OF INFORMATION, KNOWLEDGE,  
30 FACTS, CONCEPT OR INSTRUCTIONS WHICH ARE BEING PROCESSED, OR HAVE BEEN  
31 PROCESSED IN A COMPUTER AND MAY BE IN ANY FORM INCLUDING MAGNETIC STOR-  
32 AGE MEDIA, PUNCHED CARDS, OR STORED INTERNALLY IN THE MEMORY OF THE  
33 COMPUTER.

34 S 2. Paragraph (c) of subdivision 2 of section 155.05 of the penal law  
35 is amended and a new paragraph (f) is added to read as follows:

36 (c) By committing the crime of issuing a bad check, as defined in  
37 section 190.05, OR BY OBTAINING PROPERTY OR SERVICE BY USING OR PRESENT-  
38 ING A FORM OF PAYMENT OR PERSONAL IDENTIFYING INFORMATION THE ACTOR  
39 KNOWS HE OR SHE IS NOT AUTHORIZED TO USE OR KNOWS IS EXPIRED OR FORGED  
40 OR OTHERWISE NOT VALID;

41 (F) BY THEFT OF SERVICE. THEFT OF SERVICE MEANS EITHER: (I) USING OR  
42 ACCESSING A SERVICE IN A MANNER THAT OTHERWISE REQUIRES PAYMENT AND  
43 INTENTIONALLY FAILING TO PAY FOR SUCH USE OR ACCESS BY EITHER TAMPERING  
44 WITHOUT AUTHORITY WITH A DELIVERY, PAYMENT, OR MEASUREMENT DEVICE OR  
45 MECHANISM, OR BY ENTERING OR LEAVING PREMISES WHERE THE SERVICE IS  
46 PROVIDED BY STEALTH OR BY EVADING A PHYSICAL BARRIER, OR (II) USING OR  
47 ACCESSING A SERVICE IN A MANNER THAT OTHERWISE REQUIRES PAYMENT OR THE  
48 PRESENTATION OF PERSONAL IDENTIFYING INFORMATION AND USING OR PRESENTING  
49 A FORM OF PAYMENT OR PERSONAL IDENTIFYING INFORMATION THE ACTOR KNOWS HE  
50 OR SHE IS NOT AUTHORIZED TO USE OR KNOWS IS EXPIRED OR FORGED OR OTHER-  
51 WISE NOT VALID.

52 S 3. Subdivision 1 of section 155.20 of the penal law is amended to  
53 read as follows:

54 1. Except as otherwise specified in this section, value means the  
55 market value of the property at the time and place of the crime, or if  
56 such cannot be satisfactorily ascertained, the cost of replacement of

1 the property within a reasonable time after the crime. WITH REGARD TO  
2 SERVICE, VALUE SHALL ALSO MEAN THE COST OF PROVIDING THE SERVICE AT THE  
3 TIME OF THE CRIME, AND WITH REGARD TO THE VALUE OF COMPUTER DATA OR  
4 COMPUTER PROGRAM VALUE SHALL MEAN THE REPLACEMENT COST OR THE MARKET  
5 VALUE AT THE TIME AND PLACE OF THE CRIME, OR THE COST TO WRITE OR DEVEL-  
6 OP SUCH DATA AND/OR PROGRAM, WHICHEVER IS GREATER.

7 S 4. The penal law is amended by adding a new section 155.23 to read  
8 as follows:

9 S 155.23 PETIT THEFT OF SERVICE.

10 A PERSON IS GUILTY OF PETIT THEFT OF SERVICE WHEN HE OR SHE STEALS A  
11 SERVICE.

12 PETIT THEFT OF SERVICE IS A CLASS B MISDEMEANOR.

13 S 5. Section 155.25 of the penal law is amended to read as follows:

14 S 155.25 Petit larceny.

15 A person is guilty of petit larceny when he OR SHE steals property, OR  
16 STEALS A SERVICE AND THE VALUE OF THE SERVICE EXCEEDS FIVE HUNDRED  
17 DOLLARS.

18 Petit larceny is a class A misdemeanor.

19 S 6. The opening paragraph and subdivisions 1, 4 and 6 of section  
20 155.30 of the penal law, the opening paragraph and subdivisions 1 and 6  
21 as amended by chapter 515 of the laws of 1986, subdivision 4 as amended  
22 by chapter 556 of the laws of 1987, are amended to read as follows:

23 A person is guilty of grand larceny in the fourth degree when he OR  
24 SHE steals property OR A SERVICE and when:

25 1. The value of the property OR SERVICE exceeds one thousand dollars;  
26 or

27 4. The property consists of a credit card or debit card OR PERSONAL  
28 IDENTIFYING INFORMATION; or

29 6. The property OR SERVICE, regardless of its nature and value, is  
30 obtained by extortion; or

31 S 7. Section 155.35 of the penal law, as amended by chapter 464 of the  
32 laws of 2010, is amended to read as follows:

33 S 155.35 Grand larceny in the third degree.

34 A person is guilty of grand larceny in the third degree when he or she  
35 steals property OR A SERVICE and:

36 1. when the value of the property exceeds three thousand dollars, or

37 2. the property is an automated teller machine or the contents of an  
38 automated teller machine, OR

39 3. THE PROPERTY IS PERSONAL IDENTIFYING INFORMATION OF TWENTY-FIVE OR  
40 MORE PERSONS.

41 Grand larceny in the third degree is a class D felony.

42 S 8. Section 155.40 of the penal law, as amended by chapter 515 of the  
43 laws of 1986, is amended to read as follows:

44 S 155.40 Grand larceny in the second degree.

45 A person is guilty of grand larceny in the second degree when he OR  
46 SHE steals property OR A SERVICE and when:

47 1. The value of the property OR SERVICE exceeds fifty thousand  
48 dollars; or

49 2. The property OR SERVICE, regardless of its nature and value, is  
50 obtained by extortion committed by instilling in the victim a fear that  
51 the actor or another person will (a) cause physical injury to some  
52 person in the future, or (b) cause damage to property, or (c) use or  
53 abuse his OR HER position as a public servant by engaging in conduct  
54 within or related to his OR HER official duties, or by failing or refus-  
55 ing to perform an official duty, in such manner as to affect some person  
56 adversely, OR

1 3. THE PROPERTY IS PERSONAL IDENTIFYING INFORMATION OF ONE HUNDRED OR  
2 MORE PERSONS.

3 Grand larceny in the second degree is a class C felony.

4 S 9. Section 155.42 of the penal law, as added by chapter 515 of the  
5 laws of 1986, is amended to read as follows:

6 S 155.42 Grand larceny in the first degree.

7 A person is guilty of grand larceny in the first degree when he OR SHE  
8 steals property OR A SERVICE and when the value of the property OR  
9 SERVICE exceeds one million dollars; OR THE PROPERTY IS PERSONAL IDENTI-  
10 FYING INFORMATION OF ONE THOUSAND OR MORE PERSONS.

11 Grand larceny in the first degree is a class B felony.

12 S 10. Subdivisions 5 and 8 of section 156.00 of the penal law, subdivi-  
13 sion 5 as amended and subdivision 8 as added by chapter 558 of the  
14 laws of 2006, are amended to read as follows:

15 5. "Computer material" is property and means any computer data or  
16 computer program which:

17 (a) contains records of the medical history or medical treatment of an  
18 identified or readily identifiable individual or individuals. This term  
19 shall not apply to the gaining access to or duplication solely of the  
20 medical history or medical treatment records of a person by that person  
21 or by another specifically authorized by the person whose records are  
22 gained access to or duplicated; or

23 (b) contains records maintained by the state or any political subdivi-  
24 sion thereof or any governmental instrumentality within the state which  
25 contains any information concerning a person, as defined in subdivision  
26 seven of section 10.00 of this chapter, which because of name, number,  
27 symbol, mark or other identifier, can be used to identify the person and  
28 which is otherwise prohibited by law from being disclosed. This term  
29 shall not apply to the gaining access to or duplication solely of  
30 records of a person by that person or by another specifically authorized  
31 by the person whose records are gained access to or duplicated; or

32 (c) is not and is not intended to be available to anyone other than  
33 the person or persons rightfully in possession thereof or selected  
34 persons having access thereto with his, her or their consent and which  
35 [accords or may accord such rightful possessors an advantage over  
36 competitors or other persons who do not have knowledge or the benefit  
37 thereof] ANY PERSON, OTHER THAN A PERSON RIGHTFULLY IN POSSESSION, KNOWS  
38 OR SHOULD KNOW IS NOT INTENDED TO BE AVAILABLE TO HIM OR HER.

39 8. "Without authorization" means to use or to access a computer,  
40 computer service or computer network without the permission of the owner  
41 or lessor or someone licensed or privileged by the owner or lessor where  
42 such person knew that his or her use or access was without permission or  
43 after actual notice to such person that such use or access was without  
44 permission, OR THAT SUCH USE OR ACCESS WAS FOR PURPOSES OTHER THAN THOSE  
45 FOR WHICH PERMISSION WAS GRANTED BY THE OWNER, LESSOR, OR SOMEONE  
46 LICENSED OR PRIVILEGED BY SUCH OWNER OR LESSOR. It shall also mean the  
47 access of a computer service by a person without permission where such  
48 person knew that such access was without permission or after actual  
49 notice to such person, that such access was without permission.

50 Proof that such person used or accessed a computer, computer service  
51 or computer network through the knowing use of a set of instructions,  
52 code or computer program that bypasses, defrauds or otherwise circum-  
53 vents a security measure installed or used with the user's authorization  
54 on the computer, computer service or computer network shall be presump-  
55 tive evidence that such person used or accessed such computer, computer  
56 service or computer network without authorization.

1 S 11. Section 156.20 of the penal law, as amended by chapter 558 of  
2 the laws of 2006, is amended to read as follows:

3 S 156.20 Computer tampering in the [fourth] FIFTH degree.

4 A person is guilty of computer tampering in the [fourth] FIFTH degree  
5 when he or she uses, causes to be used, or accesses a computer, computer  
6 service, or computer network without authorization and he or she inten-  
7 tionally alters in any manner or destroys computer data or a computer  
8 program of another person.

9 Computer tampering in the [fourth] FIFTH degree is a class A misdemea-  
10 nor.

11 S 12. Section 156.25 of the penal law, as amended by chapter 89 of the  
12 laws of 1993, subdivision 2 as amended by chapter 376 of the laws of  
13 1997, is amended to read as follows:

14 S 156.25 Computer tampering in the [third] FOURTH degree.

15 A person is guilty of computer tampering in the third degree when he  
16 OR SHE commits the crime of computer tampering in the [fourth] FIFTH  
17 degree and:

18 1. he OR SHE does so with an intent to commit or attempt to commit or  
19 further the commission of any felony; or

20 2. he OR SHE has been previously convicted of any crime under this  
21 article or subdivision eleven of section 165.15 of this chapter; or

22 3. he OR SHE intentionally alters in any manner or destroys computer  
23 material; or

24 4. he OR SHE intentionally alters in any manner or destroys computer  
25 data or a computer program so as to cause damages in an aggregate amount  
26 exceeding one thousand dollars.

27 Computer tampering in the [third] FOURTH degree is a class E felony.

28 S 13. Section 156.26 of the penal law, as amended by chapter 590 of  
29 the laws of 2008, is amended to read as follows:

30 S 156.26 Computer tampering in the [second] THIRD degree.

31 A person is guilty of computer tampering in the [second] THIRD degree  
32 when he or she commits the crime of computer tampering in the fourth  
33 degree and he or she intentionally alters in any manner or destroys:

34 1. computer data or a computer program so as to cause damages in an  
35 aggregate amount exceeding three thousand dollars; or

36 2. computer material that contains records of the medical history or  
37 medical treatment of an identified or readily identifiable individual or  
38 individuals and as a result of such alteration or destruction, such  
39 individual or individuals suffer serious physical injury, and he or she  
40 is aware of and consciously disregards a substantial and unjustifiable  
41 risk that such serious physical injury may occur.

42 Computer tampering in the [second] THIRD degree is a class D felony.

43 S 14. Section 156.27 of the penal law, as added by chapter 89 of the  
44 laws of 1993, is amended to read as follows:

45 S 156.27 Computer tampering in the [first] SECOND degree.

46 A person is guilty of computer tampering in the [first] SECOND degree  
47 when he OR SHE commits the crime of computer tampering in the fourth  
48 degree and he OR SHE intentionally alters in any manner or destroys  
49 computer data or a computer program so as to cause damages in an aggre-  
50 gate amount exceeding fifty thousand dollars.

51 Computer tampering in the [first] SECOND degree is a class C felony.

52 S 15. The penal law is amended by adding a new section 156.28 to read  
53 as follows:

54 S 156.28 COMPUTER TAMPERING IN THE FIRST DEGREE.

55 A PERSON IS GUILTY OF COMPUTER TAMPERING IN THE FIRST DEGREE WHEN HE  
56 OR SHE COMMITS THE CRIME OF COMPUTER TAMPERING IN THE FIFTH DEGREE AND

1 HE OR SHE INTENTIONALLY ALTERS IN ANY MANNER OR DESTROYS COMPUTER DATA  
2 OR A COMPUTER PROGRAM AND THEREBY CAUSES DAMAGES IN AN AGGREGATE AMOUNT  
3 OF ONE MILLION DOLLARS OR MORE.

4 COMPUTER TAMPERING IN THE FIRST DEGREE IS A CLASS B FELONY.

5 S 16. The penal law is amended by adding five new sections 156.60,  
6 156.65, 156.70, 156.75 and 156.80 to read as follows:

7 S 156.60 DENIAL OF SERVICE ATTACK ON A COMPUTER, COMPUTER SERVICE,  
8 COMPUTER PROGRAM, OR COMPUTER NETWORK IN THE FIFTH DEGREE.

9 A PERSON IS GUILTY OF DENIAL OF SERVICE ATTACK ON A COMPUTER, COMPUTER  
10 SERVICE, COMPUTER PROGRAM, OR COMPUTER NETWORK IN THE FIFTH DEGREE WHEN  
11 HE OR SHE ACTING ALONE OR WITH OTHERS KNOWINGLY CAUSES THE TRANSMISSION  
12 OF A PROGRAM, INFORMATION, CODE, OR COMMAND, OR OTHER ELECTRONIC COMMU-  
13 NICATION, AND AS A RESULT OF SUCH CONDUCT, INTENTIONALLY MAKES THE  
14 COMPUTER, COMPUTER SERVICE, COMPUTER PROGRAM, OR COMPUTER NETWORK TEMPO-  
15 RARILY OR INDEFINITELY UNAVAILABLE TO ITS INTENDED USERS.

16 DENIAL OF SERVICE ATTACK ON A COMPUTER, COMPUTER SERVICE, COMPUTER  
17 PROGRAM, OR COMPUTER NETWORK IN THE FIFTH DEGREE IS A CLASS A MISDEMEA-  
18 NOR.

19 S 156.65 DENIAL OF SERVICE ATTACK ON A COMPUTER, COMPUTER SERVICE,  
20 COMPUTER PROGRAM, OR COMPUTER NETWORK IN THE FOURTH DEGREE.

21 A PERSON IS GUILTY OF DENIAL OF SERVICE ATTACK ON A COMPUTER, COMPUTER  
22 SERVICE, COMPUTER PROGRAM, OR COMPUTER NETWORK IN THE FOURTH DEGREE WHEN  
23 HE OR SHE COMMITS THE CRIME OF DENIAL OF SERVICE ATTACK ON A COMPUTER,  
24 COMPUTER SERVICE, COMPUTER PROGRAM, OR COMPUTER NETWORK IN THE FIFTH  
25 DEGREE AND THEREBY CAUSES DAMAGES OR LOSS THAT EXCEEDS ONE THOUSAND  
26 DOLLARS TO ANOTHER PERSON OR PERSONS, AND/OR ONE OR MORE FINANCIAL  
27 INSTITUTIONS AND/OR OTHER BUSINESSES.

28 DENIAL OF SERVICE ATTACK ON A COMPUTER, COMPUTER SERVICE, COMPUTER  
29 PROGRAM, OR COMPUTER NETWORK IN THE FOURTH DEGREE IS A CLASS E FELONY.

30 S 156.70 DENIAL OF SERVICE ATTACK ON A COMPUTER, COMPUTER SERVICE,  
31 COMPUTER PROGRAM, OR COMPUTER NETWORK IN THE THIRD DEGREE.

32 A PERSON IS GUILTY OF DENIAL OF SERVICE ATTACK ON A COMPUTER IN THE  
33 THIRD DEGREE WHEN HE OR SHE COMMITS THE CRIME OF DENIAL OF SERVICE  
34 ATTACK ON A COMPUTER, COMPUTER SERVICE, COMPUTER PROGRAM, OR COMPUTER  
35 NETWORK IN THE FIFTH DEGREE AND THEREBY CAUSES DAMAGES OR LOSS THAT  
36 EXCEEDS THREE THOUSAND DOLLARS TO ANOTHER PERSON OR PERSONS, AND/OR TO  
37 ONE OR MORE FINANCIAL INSTITUTIONS AND/OR OTHER BUSINESSES, OR COMMITS  
38 OR ATTEMPTS TO COMMIT A CLASS D FELONY OR HIGHER LEVEL CRIME OR ACTS AS  
39 AN ACCESSORY TO THE COMMISSION OF A CLASS D OR HIGHER LEVEL FELONY.

40 DENIAL OF SERVICE ATTACK ON A COMPUTER, COMPUTER SERVICE, COMPUTER  
41 PROGRAM, OR COMPUTER NETWORK IN THE THIRD DEGREE IS A CLASS D FELONY.

42 S 156.75 DENIAL OF SERVICE ATTACK ON A COMPUTER, COMPUTER SERVICE,  
43 COMPUTER PROGRAM, OR COMPUTER NETWORK IN THE SECOND DEGREE.

44 A PERSON IS GUILTY OF DENIAL OF SERVICE ATTACK ON A COMPUTER, COMPUTER  
45 SERVICE, COMPUTER PROGRAM, OR COMPUTER NETWORK IN THE SECOND DEGREE WHEN  
46 HE OR SHE COMMITS THE CRIME OF DENIAL OF SERVICE ATTACK ON A COMPUTER,  
47 COMPUTER SERVICE, COMPUTER PROGRAM, OR COMPUTER NETWORK IN THE FIFTH  
48 DEGREE AND THEREBY CAUSES DAMAGES OR LOSS THAT EXCEEDS FIFTY THOUSAND  
49 DOLLARS TO ANOTHER PERSON OR PERSONS, AND/OR FINANCIAL INSTITUTIONS  
50 AND/OR OTHER BUSINESSES, OR COMMITS OR ATTEMPTS TO COMMIT A CLASS C  
51 FELONY OR HIGHER LEVEL CRIME OR ACTS AS AN ACCESSORY IN THE COMMISSION  
52 OF A CLASS C OR HIGHER LEVEL FELONY.

53 DENIAL OF SERVICE ATTACK ON A COMPUTER, COMPUTER SERVICE, COMPUTER  
54 PROGRAM, OR COMPUTER NETWORK IN THE SECOND DEGREE IS A CLASS C FELONY.

55 S 156.80 DENIAL OF SERVICE ATTACK ON A COMPUTER, COMPUTER SERVICE,  
56 COMPUTER PROGRAM, OR COMPUTER NETWORK IN THE FIRST DEGREE.

1 A PERSON IS GUILTY OF DENIAL OF SERVICE ATTACK ON A COMPUTER, COMPUTER  
2 SERVICE, COMPUTER PROGRAM, OR COMPUTER NETWORK IN THE FIRST DEGREE WHEN  
3 HE OR SHE COMMITS THE CRIME OF DENIAL OF SERVICE ATTACK ON A COMPUTER,  
4 COMPUTER SERVICE, COMPUTER PROGRAM, OR COMPUTER NETWORK IN THE FIFTH  
5 DEGREE AND THEREBY CAUSES DAMAGES OR LOSS THAT EXCEEDS ONE MILLION  
6 DOLLARS TO ANOTHER PERSON OR PERSONS, AND/OR ONE OR MORE FINANCIAL  
7 INSTITUTIONS AND/OR OTHER BUSINESSES, OR COMMITS OR ATTEMPTS TO COMMIT A  
8 CLASS B FELONY OR HIGHER LEVEL CRIME OR ACTS AS AN ACCESSORY IN THE  
9 COMMISSION ON A CLASS B OR HIGHER LEVEL FELONY.

10 DENIAL OF SERVICE ATTACK ON A COMPUTER, COMPUTER SERVICE, COMPUTER  
11 PROGRAM, OR COMPUTER NETWORK IN THE FIRST DEGREE IS A CLASS B FELONY.

12 S 17. Subdivision 2 of section 165.45 of the penal law, as amended by  
13 chapter 81 of the laws of 1995, is amended to read as follows:

14 2. The property consists of a credit card, debit card or public bene-  
15 fit card, OR PERSONAL IDENTIFYING INFORMATION AS DEFINED IN SECTION  
16 190.77 OF THIS CHAPTER; or

17 S 18. Section 165.50 of the penal law, as amended by chapter 515 of  
18 the laws of 1986, is amended to read as follows:

19 S 165.50 Criminal possession of stolen property in the third degree.

20 A person is guilty of criminal possession of stolen property in the  
21 third degree when he OR SHE knowingly possesses stolen property, with  
22 intent to benefit himself OR HERSELF or a person other than an owner  
23 thereof or to impede the recovery by an owner thereof, and when the  
24 value of the property exceeds three thousand dollars, OR THE PROPERTY  
25 CONSISTED OF THE PERSONAL IDENTIFYING INFORMATION OF TWENTY-FIVE OR MORE  
26 PERSONS.

27 Criminal possession of stolen property in the third degree is a class  
28 D felony.

29 S 19. Section 165.52 of the penal law, as added by chapter 515 of the  
30 laws of 1986, is amended to read as follows:

31 S 165.52 Criminal possession of stolen property in the second degree.

32 A person is guilty of criminal possession of stolen property in the  
33 second degree when he OR SHE knowingly possesses stolen property, with  
34 intent to benefit himself OR HERSELF or a person other than an owner  
35 thereof or to impede the recovery by an owner thereof, and when the  
36 value of the property exceeds fifty thousand dollars, OR THE PROPERTY  
37 CONSISTS OF THE PERSONAL IDENTIFYING INFORMATION OF ONE HUNDRED OR MORE  
38 PERSONS.

39 Criminal possession of stolen property in the second degree is a class  
40 C felony.

41 S 20. Section 165.54 of the penal law, as added by chapter 515 of the  
42 laws of 1986, is amended to read as follows:

43 S 165.54 Criminal possession of stolen property in the first degree.

44 A person is guilty of criminal possession of stolen property in the  
45 first degree when he OR SHE knowingly possesses stolen property, with  
46 intent to benefit himself OR HERSELF or a person other than an owner  
47 thereof or to impede the recovery by an owner, and when the value of the  
48 property exceeds one million dollars, OR THE PROPERTY CONSISTS OF THE  
49 PERSONAL IDENTIFYING INFORMATION OF ONE THOUSAND OR MORE PERSONS.

50 Criminal possession of stolen property in the first degree is a class  
51 B felony.

52 S 21. Section 190.60 of the penal law, as amended by chapter 491 of  
53 the laws of 1992, subdivision 1 as amended by chapter 357 of the laws of  
54 1996, is amended to read as follows:

55 S 190.60 Scheme to defraud in the [second] FIFTH degree.

1 1. A person is guilty of a scheme to defraud in the [second] FIFTH  
2 degree when he OR SHE engages in a scheme constituting a systematic  
3 ongoing course of conduct with intent to defraud more than one person or  
4 to obtain property from more than one person by false or fraudulent  
5 pretenses, representations or promises, and so obtains property from one  
6 or more of such persons.

7 2. In any prosecution under this section, it shall be necessary to  
8 prove the identity of at least one person from whom the defendant so  
9 obtained property, but it shall not be necessary to prove the identity  
10 of any other intended victim.

11 Scheme to defraud in the [second] FIFTH degree is a class A misdemea-  
12 nor.

13 S 22. The penal law is amended by adding three new sections 190.62,  
14 190.63 and 190.64 to read as follows:

15 S 190.62 SCHEME TO DEFRAUD IN THE FOURTH DEGREE.

16 A PERSON IS GUILTY OF A SCHEME TO DEFRAUD IN THE FOURTH DEGREE WHEN HE  
17 OR SHE ENGAGES IN A SCHEME TO DEFRAUD IN THE FIFTH DEGREE, AND

18 1. INTENDS TO OBTAIN PROPERTY OR SERVICE FROM TEN OR MORE PERSONS; OR

19 2. THE VALUE OF THE PROPERTY OR SERVICE OBTAINED EXCEEDS ONE THOUSAND  
20 DOLLARS; OR

21 3. INTENDS TO OBTAIN AND DOES OBTAIN PROPERTY OR SERVICE FROM AT LEAST  
22 ONE VULNERABLE ELDERLY PERSON AS DEFINED IN SECTION 260.31 OF THIS CHAP-  
23 TER.

24 SCHEME TO DEFRAUD IN THE FOURTH DEGREE IS A CLASS E FELONY.

25 S 190.63 SCHEME TO DEFRAUD IN THE THIRD DEGREE.

26 A PERSON IS GUILTY OF A SCHEME TO DEFRAUD IN THE THIRD DEGREE WHEN HE  
27 OR SHE ENGAGES IN A SCHEME TO DEFRAUD IN THE FIFTH DEGREE, AND

28 1. INTENDS TO OBTAIN PROPERTY OR SERVICE FROM TWENTY-FIVE OR MORE  
29 PERSONS; OR

30 2. THE VALUE OF THE PROPERTY OR SERVICE OBTAINED EXCEEDS THREE THOU-  
31 SAND DOLLARS.

32 SCHEME TO DEFRAUD IN THE THIRD DEGREE IS A CLASS D FELONY.

33 S 190.64 SCHEME TO DEFRAUD IN THE SECOND DEGREE.

34 A PERSON IS GUILTY OF A SCHEME TO DEFRAUD IN THE SECOND DEGREE WHEN HE  
35 OR SHE ENGAGES IN A SCHEME TO DEFRAUD IN THE FIFTH DEGREE, AND

36 1. INTENDS TO OBTAIN PROPERTY OR SERVICE FROM ONE HUNDRED OR MORE  
37 PERSONS; OR

38 2. THE VALUE OF THE PROPERTY OR SERVICE OBTAINED EXCEEDS FIFTY THOU-  
39 SAND DOLLARS.

40 SCHEME TO DEFRAUD IN THE SECOND DEGREE IS A CLASS C FELONY.

41 S 23. Section 190.65 of the penal law, as amended by chapter 291 of  
42 the laws of 2008, is amended to read as follows:

43 S 190.65 Scheme to defraud in the first degree.

44 [1.] A person is guilty of a scheme to defraud in the first degree  
45 when he or she[: (a)] engages in CONDUCT CONSTITUTING a scheme [consti-  
46 tuting a systematic ongoing course of conduct with intent] to defraud  
47 [ten] IN THE FIFTH DEGREE AND INTENDS TO OBTAIN PROPERTY OR SERVICE FROM  
48 ONE THOUSAND or more persons or to obtain property from ten or more  
49 persons by false or fraudulent pretenses, representations or promises,  
50 and so obtains property from one or more of such persons; [or (b)]  
51 engages in a scheme constituting a systematic ongoing course of conduct  
52 with intent to defraud more than one person or to obtain property from  
53 more than one person by false or fraudulent pretenses, representations  
54 or promises, and so obtains] AND VALUE OF THE property [with a value in  
55 excess of one thousand dollars from one or more such persons; or (c)]  
56 engages in a scheme constituting a systematic ongoing course of conduct



1 with intent to defraud more than one person, more than one of whom is a  
2 vulnerable elderly person as defined in subdivision three of section  
3 260.30 of this chapter or to obtain property from more than one person,  
4 more than one of whom is a vulnerable elderly person as defined in  
5 subdivision three of section 260.30 of this chapter, by false or fraudu-  
6 lent pretenses, representations or promises, and so obtains property  
7 from one or more such persons.

8 2. In any prosecution under this section, it shall be necessary to  
9 prove the identity of at least one person from whom the defendant so  
10 obtained property, but it shall not be necessary to prove the identity  
11 of any other intended victim, provided that in any prosecution under  
12 paragraph (c) of subdivision one of this section, it shall be necessary  
13 to prove the identity of at least one such vulnerable elderly person as  
14 defined in subdivision three of section 260.30 of this chapter] OR  
15 SERVICE OBTAINED EXCEEDS ONE MILLION DOLLARS.

16 Scheme to defraud in the first degree is a class [E] B felony.

17 S 24. Section 190.78 of the penal law, as added by chapter 619 of the  
18 laws of 2002, is amended to read as follows:

19 S 190.78 Identity theft in the [third] FIFTH degree.

20 A person is guilty of identity theft in the [third] FIFTH degree when  
21 he or she knowingly and with intent to defraud assumes the identity of  
22 another person by presenting himself or herself as that other person, or  
23 by acting as that other person or by using personal identifying informa-  
24 tion of that other person, and thereby:

25 1. obtains goods, money, property or services or uses credit in the  
26 name of such other person or causes financial loss to such person or to  
27 another person or persons; or

28 2. commits a class A misdemeanor or higher level crime.

29 Identity theft in the [third] FIFTH degree is a class A misdemeanor.

30 S 25. Section 190.79 of the penal law, as added by chapter 619 of the  
31 laws of 2002, subdivision 4 as amended by chapter 279 of the laws of  
32 2008, is amended to read as follows:

33 S 190.79 Identity theft in the [second] FOURTH degree.

34 A person is guilty of [identify] IDENTITY theft in the [second] FOURTH  
35 degree when he or she knowingly and with intent to defraud assumes the  
36 identity of another person by presenting himself or herself as that  
37 other person, or by acting as that other person or by using personal  
38 identifying information of that other person, and thereby:

39 1. obtains goods, money, property or services or uses credit in the  
40 name of such other person in an aggregate amount that exceeds five  
41 hundred dollars; or

42 2. causes financial loss to such person or to another person or  
43 persons in an aggregate amount that exceeds five hundred dollars; or

44 3. commits or attempts to commit a felony or acts as an accessory to  
45 the commission of a felony; or

46 4. commits the crime of identity theft in the [third] FIFTH degree as  
47 defined in section 190.78 of this article and has been previously  
48 convicted within the last [five years of identity theft in the third  
49 degree as defined in section 190.78, identity theft in the second degree  
50 as defined in this section, identity theft in the first degree as  
51 defined in section 190.80, unlawful possession of personal identifica-  
52 tion information in the third degree as defined in section 190.81,  
53 unlawful possession of personal identification information in the second  
54 degree as defined in section 190.82, unlawful possession of personal  
55 identification information in the first degree as defined in section  
56 190.83, unlawful possession of a skimmer device in the second degree as

1 defined in section 190.85, unlawful possession of a skimmer device in  
2 the first degree as defined in section 190.86, grand larceny in the  
3 fourth degree as defined in section 155.30, grand larceny in the third  
4 degree as defined in section 155.35, grand larceny in the second degree  
5 as defined in section 155.40 or grand larceny in the first degree as  
6 defined in section 155.42 of this chapter] TEN YEARS, EXCLUDING ANY TIME  
7 PERIOD DURING WHICH SUCH PERSON WAS INCARCERATED FOR ANY REASON, OF ANY  
8 CRIME IN THIS ARTICLE OR ARTICLE ONE HUNDRED SEVENTY OF THIS CHAPTER, OR  
9 OF ANY LARCENY CRIME AS DEFINED IN ARTICLE ONE HUNDRED FIFTY-FIVE OF  
10 THIS CHAPTER, OR OF ANY CRIMINAL POSSESSION OF STOLEN PROPERTY CRIME AS  
11 DEFINED IN ARTICLE ONE HUNDRED SIXTY-FIVE OF THIS CHAPTER; OR HE OR SHE  
12 KNOWINGLY AND WITH INTENT TO DEFRAUD ASSUMES THE IDENTITY OF THREE OR  
13 MORE PERSONS BY PRESENTING HIMSELF OR HERSELF AS THOSE PERSONS OR BY  
14 ACTING AS THOSE PERSONS OR BY USING PERSONAL IDENTIFYING INFORMATION OF  
15 ANY OF THOSE PERSONS AND THEREBY OBTAINS GOODS, MONEY, PROPERTY OR  
16 SERVICES OR USES CREDIT IN THE NAME OF AT LEAST ONE SUCH PERSON, OR  
17 CAUSES FINANCIAL LOSS TO AT LEAST ONE SUCH PERSON OR TO ANOTHER PERSON  
18 OR PERSONS.

19 Identity theft in the [second] FOURTH degree is a class E felony.

20 S 26. Section 190.80 of the penal law, as added by chapter 619 of the  
21 laws of 2002, subdivision 4 as amended by chapter 279 of the laws of  
22 2008, is amended to read as follows:

23 S 190.80 Identity theft in the [first] THIRD degree.

24 A person is guilty of identity theft in the [first] THIRD degree when  
25 he or she knowingly and with intent to defraud assumes the identity of  
26 another person by presenting himself or herself as that other person, or  
27 by acting as that other person or by using personal identifying informa-  
28 tion of that other person, and thereby:

29 1. obtains goods, money, property or services or uses credit in the  
30 name of such other person in an aggregate amount that exceeds two thou-  
31 sand dollars; or

32 2. causes financial loss to such person or to another person or  
33 persons in an aggregate amount that exceeds two thousand dollars; or

34 3. commits or attempts to commit a class D felony or higher level  
35 crime or acts as an accessory in the commission of a class D or higher  
36 level felony; or

37 4. commits the crime of identity theft in the [second] FOURTH degree  
38 as defined in section 190.79 of this article and has been previously  
39 convicted within the last [five years of identity theft in the third  
40 degree as defined in section 190.78, identity theft in the second degree  
41 as defined in section 190.79, identity theft in the first degree as  
42 defined in this section, unlawful possession of personal identification  
43 information in the third degree as defined in section 190.81, unlawful  
44 possession of personal identification information in the second degree  
45 as defined in section 190.82, unlawful possession of personal identifi-  
46 cation information in the first degree as defined in section 190.83,  
47 unlawful possession of a skimmer device in the second degree as defined  
48 in section 190.85, unlawful possession of a skimmer device in the first  
49 degree as defined in section 190.86, grand larceny in the fourth degree  
50 as defined in section 155.30, grand larceny in the third degree as  
51 defined in section 155.35, grand larceny in the second degree as defined  
52 in section 155.40 or grand larceny in the first degree as defined in  
53 section 155.42 of this chapter] TEN YEARS, EXCLUDING ANY TIME PERIOD  
54 DURING WHICH SUCH PERSON WAS INCARCERATED FOR ANY REASON, OF ANY CRIME  
55 IN THIS ARTICLE OR ARTICLE ONE HUNDRED SEVENTY OF THIS CHAPTER, OR OF  
56 ANY LARCENY CRIME AS DEFINED IN ARTICLE ONE HUNDRED FIFTY-FIVE OF THIS

1 CHAPTER, OR OF ANY CRIMINAL POSSESSION OF STOLEN PROPERTY CRIME AS  
2 DEFINED IN ARTICLE ONE HUNDRED SIXTY-FIVE OF THIS CHAPTER; OR ASSUMES  
3 THE IDENTITY OF TEN OR MORE PERSONS BY PRESENTING HIMSELF OR HERSELF AS  
4 THOSE OTHER PERSONS, OR BY ACTING AS THOSE OTHER PERSONS, OR BY USING  
5 PERSONAL IDENTIFYING INFORMATION OF THOSE OTHER PERSONS, AND THEREBY  
6 OBTAINING GOODS, MONEY, PROPERTY OR SERVICES OR USES CREDIT IN THE NAME  
7 OF AT LEAST ONE SUCH PERSON, OR CAUSES FINANCIAL LOSS TO AT LEAST ONE  
8 SUCH PERSON, TO ANOTHER PERSON OR PERSONS.

9 Identity theft in the [first] THIRD degree is a class D felony.

10 S 27. Section 190.80-a of the penal law, as added by chapter 226 of  
11 the laws of 2008, is renumbered section 190.80-c and amended, and two  
12 new sections 190.80-a and 190.80-b are added to read as follows:

13 S 190.80-A IDENTITY THEFT IN THE SECOND DEGREE.

14 A PERSON IS GUILTY OF IDENTITY THEFT IN THE SECOND DEGREE WHEN:

15 1. HE OR SHE KNOWINGLY AND WITH INTENT TO DEFRAUD ASSUMES THE IDENTITY  
16 OF ANOTHER PERSON BY PRESENTING HIMSELF OR HERSELF AS THAT OTHER PERSON,  
17 OR BY ACTING AS THAT OTHER PERSON OR BY USING PERSONAL IDENTIFYING  
18 INFORMATION OF THAT OTHER PERSON, AND THEREBY:

19 A. OBTAINS GOODS, MONEY, PROPERTY OR SERVICES OR USES CREDIT IN THE  
20 NAME OF SUCH OTHER PERSON IN AN AGGREGATE AMOUNT THAT EXCEEDS  
21 TWENTY-FIVE THOUSAND DOLLARS; OR

22 B. CAUSES FINANCIAL LOSS TO SUCH PERSON TO ANOTHER PERSON OR PERSONS  
23 IN AN AGGREGATE AMOUNT THAT EXCEEDS TWENTY-FIVE THOUSAND DOLLARS; OR

24 C. COMMITS OR ATTEMPTS TO COMMIT A CLASS C FELONY OR HIGHER LEVEL  
25 CRIME OR ACTS AS AN ACCESSORY IN THE COMMISSION OF A CLASS C OR HIGHER  
26 LEVEL FELONY; OR

27 D. COMMITS THE CRIME OF IDENTITY THEFT IN THE THIRD DEGREE AS DEFINED  
28 IN SECTION 190.80 OF THIS ARTICLE AND HAS BEEN PREVIOUSLY CONVICTED  
29 WITHIN THE LAST TEN YEARS, EXCLUDING ANY TIME DURING WHICH SUCH PERSON  
30 WAS INCARCERATED FOR ANY REASON, OF ANY CRIME IN THIS ARTICLE OR ARTICLE  
31 ONE HUNDRED SEVENTY OF THIS CHAPTER, OR ANY LARCENY CRIME AS DEFINED IN  
32 ARTICLE ONE HUNDRED FIFTY-FIVE OF THIS CHAPTER, OR OF ANY CRIMINAL  
33 POSSESSION OF STOLEN PROPERTY CRIME AS DEFINED IN ARTICLE ONE HUNDRED  
34 SIXTY-FIVE OF THIS CHAPTER; OR

35 2. ASSUMES THE IDENTITY OF TWENTY-FIVE OR MORE PERSON BY PRESENTING  
36 HIMSELF OR HERSELF AS THOSE OTHER PERSONS, OR BY ACTING AS THOSE OTHER  
37 PERSONS, OR BY USING PERSONAL IDENTIFYING INFORMATION OF THOSE OTHER  
38 PERSONS, AND THEREBY OBTAINS GOODS, MONEY, PROPERTY OR OR SERVICES OR  
39 USES CREDIT IN THE NAME OF AT LEAST ONE SUCH PERSON, OR CAUSES FINANCIAL  
40 LOSS TO AT LEAST ONE SUCH PERSON, OR TO ANOTHER PERSON OR PERSONS.

41 IDENTITY THEFT IN THE SECOND DEGREE OF A CLASS C FELONY.

42 S 190.80-B IDENTITY THEFT IN THE FIRST DEGREE.

43 A PERSON IS GUILTY OF IDENTITY THEFT IN THE FIRST DEGREE WHEN:

44 1. HE OR SHE KNOWINGLY AND WITH INTENT TO DEFRAUD ASSUMES THE IDENTITY  
45 OF ANOTHER PERSON BY PRESENTING HIMSELF OR HERSELF AS THAT OTHER PERSON,  
46 OR BY ACTING AS THAT OTHER PERSON OR BY USING PERSONAL IDENTIFYING  
47 INFORMATION, AND THEREBY:

48 A. OBTAINS GOODS, MONEY, PROPERTY OR SERVICES OR USES CREDIT IN THE  
49 NAME OF SUCH OTHER PERSON IN AN AGGREGATE AMOUNT THAT EXCEEDS FIVE  
50 HUNDRED THOUSAND DOLLARS; OR

51 B. CAUSES FINANCIAL LOSS TO SUCH PERSON OR TO ANOTHER PERSON OR  
52 PERSONS IN AN AGGREGATE AMOUNT THAT EXCEEDS FIVE HUNDRED THOUSAND  
53 DOLLARS; OR

54 C. COMMITS OR ATTEMPTS TO COMMIT A CLASS B FELONY OR HIGHER LEVEL  
55 CRIME OR ACT AS AN ACCESSORY IN THE COMMISSION OF A CLASS B OR HIGHER  
56 LEVEL FELONY; OR

1 D. COMMITS THE CRIME OF IDENTITY THEFT IN THE SECOND DEGREE AS DEFINED  
2 IN SECTION 190.80-A OF THIS ARTICLE AND HAS BEEN PREVIOUSLY CONVICTED  
3 WITHIN THE LAST TEN YEARS, EXCLUDING ANY TIME DURING WHICH SUCH PERSON  
4 WAS INCARCERATED FOR ANY REASON, OF ANY CRIME IN THIS ARTICLE OR ARTICLE  
5 ONE HUNDRED SEVENTY OF THIS CHAPTER, OR OF ANY LARCENY CRIME AS DEFINED  
6 IN ARTICLE ONE HUNDRED FIFTY-FIVE OF THIS CHAPTER, OR OF ANY CRIMINAL  
7 POSSESSION OF STOLEN PROPERTY CRIME AS DEFINED IN ARTICLE ONE HUNDRED  
8 SIXTY-FIVE OF THIS CHAPTER; OR

9 2. ASSUMES THE IDENTITY OF ONE HUNDRED OR MORE PERSONS BY PRESENTING  
10 HIMSELF OR HERSELF AS THOSE OTHER PERSONS, OR BY ACTING AS THOSE OTHER  
11 PERSONS, OR BY USING PERSONAL IDENTIFYING INFORMATION OF THOSE OTHER  
12 PERSONS, AND THEREBY OBTAINS GOODS, MONEY, PROPERTY OR SERVICES OR USES  
13 CREDIT IN THE NAME OF A LEAST ON SUCH PERSON, OR CAUSES FINANCIAL LOSS  
14 TO AT LEAST ON SUCH PERSON, OR TO ANOTHER PERSON OR PERSONS.

15 IDENTITY THEFT IN THE FIRST DEGREE IS A CLASS B FELONY.

16 S 190.80-c Aggravated identity theft.

17 A person is guilty of aggravated identity theft when he or she know-  
18 ingly and with intent to defraud assumes the identity of another person  
19 by presenting himself or herself as that other person, or by acting as  
20 that other person or by using personal identifying information of that  
21 other person, and knows that such person is a member of the armed forc-  
22 es, and knows that such member is presently deployed outside of the  
23 continental United States OR KNOWS THAT SUCH PERSON IS A VULNERABLE  
24 ELDERLY PERSON OR A PHYSICALLY DISABLED PERSON AS SUCH TERMS ARE DEFINED  
25 IN SECTION 260.31 OF THIS CHAPTER AND:

26 1. thereby obtains goods, money, property or services or uses credit  
27 in the name of such [member of the armed forces] INDIVIDUAL in an aggre-  
28 gate amount that exceeds five hundred dollars; or

29 2. thereby causes financial loss to such [member of the armed forces]  
30 INDIVIDUAL in an aggregate amount that exceeds five hundred dollars.

31 Aggravated identity theft is a class D felony.

32 S 28. Sections 190.85 and 190.86 of the penal law, as added by chapter  
33 279 of the laws of 2008, are amended to read as follows:

34 S 190.85 [Unlawful] CRIMINAL possession of a skimmer device in the  
35 second degree.

36 1. A person is guilty of [unlawful] CRIMINAL possession of a skimmer  
37 device in the second degree when he or she possesses a skimmer device  
38 with the intent that such device be used in furtherance of the commis-  
39 sion of the crime of identity theft [or unlawful possession of personal  
40 identification information] as defined in this article, LARCENY AS  
41 DEFINED IN ARTICLE ONE HUNDRED FIFTY-FIVE OF THIS CHAPTER; OR CRIMINAL  
42 POSSESSION OF STOLEN PROPERTY AS DEFINED IN ARTICLE ONE HUNDRED  
43 SIXTY-FIVE OF THIS CHAPTER.

44 2. For purposes of this article, "skimmer device" means a device  
45 designed or adapted to obtain personal identifying information from a  
46 credit card, debit card, public benefit card, access card or device, or  
47 other card or device that contains personal identifying information.

48 [Unlawful] CRIMINAL possession of a skimmer device in the second  
49 degree is a class [A misdemeanor] D FELONY.

50 S 190.86 [Unlawful] CRIMINAL possession of a skimmer device in the first  
51 degree.

52 A person is guilty of [unlawful] CRIMINAL possession of a skimmer  
53 device in the first degree when he or she commits the crime of [unlaw-  
54 ful] CRIMINAL possession of a skimmer device in the second degree and he  
55 or she has been previously convicted within the last [five years of  
56 identity theft in the third degree as defined in section 190.78, identi-

1 ty theft in the second degree as defined in section 190.79, identity  
2 theft in the first degree as defined in section 190.80, unlawful  
3 possession of personal identification information in the third degree as  
4 defined in section 190.81, unlawful possession of personal identifica-  
5 tion information in the second degree as defined in section 190.82,  
6 unlawful possession of personal identification information in the first  
7 degree as defined in section 190.83, unlawful possession of a skimmer  
8 device in the second degree as defined in section 190.85, unlawful  
9 possession of a skimmer device in the first degree as defined in this  
10 section, grand larceny in the fourth degree as defined in section  
11 155.30, grand larceny in the third degree as defined in section 155.35,  
12 grand larceny in the second degree as defined in section 155.40 or grand  
13 larceny in the first degree as defined in section 155.42 of this chap-  
14 ter] TEN YEARS, EXCLUDING ANY TIME DURING WHICH SUCH PERSON WAS INCAR-  
15 CERATED FOR ANY REASON, FOR ANY CRIME IN THIS ARTICLE OR ARTICLE ONE  
16 HUNDRED SEVENTY OF THIS CHAPTER, OR OF ANY LARCENY CRIME AS DEFINED IN  
17 ARTICLE ONE HUNDRED FIFTY-FIVE OF THIS CHAPTER, OR OF ANY CRIMINAL  
18 POSSESSION OF STOLEN PROPERTY CRIME AS DEFINED IN ARTICLE ONE HUNDRED  
19 SIXTY-FIVE OF THIS CHAPTER.

20 [Unlawful] CRIMINAL possession of a skimmer device in the first degree  
21 is a class [E] C felony.

22 S 29. Paragraph (1) of subdivision 4 of section 20.40 of the criminal  
23 procedure law, as amended by section 3 of subpart C of part C of chapter  
24 97 of the laws of 2011, is amended to read as follows:

25 (1) An offense of identity theft, LARCENY, CRIMINAL POSSESSION OF  
26 STOLEN PROPERTY, or unlawful possession of personal identifying informa-  
27 tion, IN WHICH THE PROPERTY STOLEN OR CRIMINALLY POSSESSED IS PERSONAL  
28 IDENTIFYING INFORMATION OR COMPUTER DATA OR COMPUTER PROGRAM, and all  
29 criminal acts committed as part of the same criminal transaction as  
30 defined in subdivision two of section 40.10 of this chapter may be pros-  
31 ecuted (i) in any county in which part of the offense took place regard-  
32 less of whether the defendant was actually present in such county, or  
33 (ii) in the county in which the person who suffers financial loss  
34 resided at the time of the commission of the offense, or (iii) in the  
35 county where the person whose personal identifying information was used  
36 in the commission of the offense resided at the time of the commission  
37 of the offense. The law enforcement agency of any such county shall take  
38 a police report of the matter and provide the complainant with a copy of  
39 such report at no charge.

40 S 30. Subdivision 2 of section 690.05 of the criminal procedure law,  
41 as amended by chapter 504 of the laws of 1991, the opening paragraph as  
42 amended by chapter 424 of the laws of 1998, is amended to read as  
43 follows:

44 2. A search warrant is a court order and process directing a police  
45 officer, DISTRICT ATTORNEY OR OTHER PUBLIC SERVANT OF THE KIND DESCRIBED  
46 IN SUBDIVISION ONE OF THIS SECTION, to conduct:

47 (a) a search of designated premises, or of a designated vehicle, or of  
48 a designated person, OR OF AN ELECTRONIC COMMUNICATION SERVICE OR REMOTE  
49 COMPUTING SERVICE, for the purpose of seizing designated property or  
50 kinds of property, and to deliver any property so obtained to the court  
51 which issued the warrant; or

52 (b) a search of a designated premises for the purpose of searching for  
53 and arresting a person who is the subject of: (i) a warrant of arrest  
54 issued pursuant to this chapter, a superior court warrant of arrest  
55 issued pursuant to this chapter, or a bench warrant for a felony issued

1 pursuant to this chapter, where the designated premises is the dwelling  
2 of a third party who is not the subject of the arrest warrant; or

3 (ii) a warrant of arrest issued by any other state or federal court  
4 for an offense which would constitute a felony under the laws of this  
5 state, where the designated premises is the dwelling of a third party  
6 who is not the subject of the arrest warrant.

7 AS USED IN THIS SECTION, THE TERM "ELECTRONIC COMMUNICATIONS SERVICE"  
8 MEANS ANY SERVICE WHICH PROVIDES TO USERS THEREOF THE ABILITY TO SEND OR  
9 RECEIVE WIRE OR ELECTRONIC COMMUNICATIONS. "REMOTE COMPUTING SERVICE"  
10 MEANS ANY SERVICE WHICH PROVIDES TO USERS THEREOF COMPUTER STORAGE OR  
11 PROCESSING SERVICES BY MEANS OF AN ELECTRONIC COMMUNICATIONS SYSTEM. THE  
12 TERMS "ELECTRONIC COMMUNICATION SERVICE" AND "REMOTE COMPUTING SERVICE"  
13 SHALL BE CONSTRUED IN ACCORDANCE WITH THE ELECTRONIC COMMUNICATIONS  
14 PRIVACY ACT IN CHAPTER 121 (COMMENCING WITH SECTION 2701) OF PART I OF  
15 TITLE 18 OF THE UNITED STATE CODE ANNOTATED. THIS SECTION SHALL NOT  
16 APPLY TO CORPORATIONS THAT DO NOT PROVIDE THOSE SERVICES TO THE GENERAL  
17 PUBLIC.

18 S 31. Subdivision 1 of section 690.15 of the criminal procedure law is  
19 amended to read as follows:

20 1. A search warrant must direct a search of one or more of the  
21 following:

22 (a) A designated or described place or premises;

23 (b) A designated or described vehicle, as that term is defined in  
24 section 10.00 of the penal law;

25 (c) A designated or described person[.];

26 (D) A DESIGNATED OR DESCRIBED ELECTRONIC COMMUNICATION SERVICE OR  
27 REMOTE COMPUTING SERVICE.

28 S 32. Section 690.20 of the criminal procedure law is amended by  
29 adding a new subdivision 3 to read as follows:

30 3. THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION TO THE CONTRARY  
31 NOTWITHSTANDING, A SEARCH WARRANT DIRECTING THE SEARCH OF A DESIGNATED  
32 OR DESCRIBED ELECTRONIC COMMUNICATION SERVICE OR REMOTE COMPUTING  
33 SERVICE, MAY BE EXECUTED ON ANY COMPANY, CORPORATION OR ENTITY WHICH IS  
34 HEADQUARTERED OR LOCATED OUTSIDE OF THE STATE OF NEW YORK, AND WHICH  
35 CONDUCTS ITS REGULAR BUSINESS IN NEW YORK OR THAT OFFERS ITS SERVICES TO  
36 RESIDENTS OF NEW YORK. SERVICE ON ANY SUCH ELECTRONIC COMMUNICATION  
37 SERVICE OR REMOTE COMPUTING SERVICE ENTITY MAY BE MADE BY PERSONAL  
38 DELIVERY WITHIN THE STATE, BY REGISTERED OR CERTIFIED MAIL. SERVICE MAY  
39 ALSO BE MADE BY FACSIMILE OR OTHER ELECTRONIC MEANS IF THE SERVICE IS  
40 ACCOMPANIED WITH A CERTIFICATION FROM THE SENDER THAT SUCH SENDER IS A  
41 POLICE OFFICER, DISTRICT ATTORNEY OR OTHER PUBLIC SERVANT SPECIFIED IN  
42 SUBDIVISION ONE OF SECTION 690.05 OF THIS ARTICLE. IF AN ENTITY SHALL  
43 REFUSE SUCH SERVICE, THEN SUCH POLICE OFFICER, DISTRICT ATTORNEY OR  
44 OTHER PUBLIC SERVANT LOCATED WITHIN THE JURISDICTION IN WHICH THE ELEC-  
45 TRONIC COMMUNICATION SERVICE OR REMOTE COMPUTING SERVICE ENTITY IS  
46 LOCATED MAY SERVE THE WARRANT UPON SUCH ENTITY. A SEARCH WARRANT ISSUED  
47 PURSUANT TO THIS SUBDIVISION SHALL BE LIMITED IN SCOPE TO THE DESIGNATED  
48 OR DESCRIBED ELECTRONIC RECORDS OR DATA, EITHER IN PAPER OR ELECTRONIC  
49 FORM, THAT ARE MADE, KEPT, OR MAINTAINED BY THE ELECTRONIC COMMUNICATION  
50 SERVICE OR REMOTE COMPUTING SERVICE, AND SHALL NOT INCLUDE ANY OTHER  
51 PHYSICAL OR TANGIBLE ITEMS. ANY ELECTRONIC RECORDS OR DATA RESPONSIVE TO  
52 A SEARCH WARRANT ISSUED PURSUANT TO THIS SUBDIVISION SHALL BE ADMITTED  
53 INTO EVIDENCE BEFORE THE GRAND JURY OR AT TRIAL IN ACCORD WITH THE RULES  
54 AND LAWS OF NEW YORK STATE.

55 S 33. Section 690.30 of the criminal procedure law is amended by  
56 adding a new subdivision 3 to read as follows:

1 3. ANY PROVISION OF SUBDIVISION ONE OF THIS SECTION TO THE CONTRARY  
2 NOTWITHSTANDING, A SEARCH WARRANT THAT IS ISSUED PURSUANT TO SUBDIVISION  
3 THREE OF SECTION 690.20 OF THIS ARTICLE IS DEEMED EXECUTED AT THE TIME  
4 THAT SERVICE IS MADE UPON THE ELECTRONIC COMMUNICATION SERVICE OR REMOTE  
5 COMPUTING SERVICE ENTITY PURSUANT TO SUCH SUBDIVISION.

6 S 34. Section 496.06 of the penal law, as added by section 14 of  
7 subpart A of part H of chapter 55 of the laws of 2014, is amended to  
8 read as follows:

9 S 496.06 Public corruption.

10 1. A person commits the crime of public corruption when: (a) (i) being  
11 a public servant he or she commits a specified offense through the use  
12 of his or her public office, or (ii) being a person acting in concert  
13 with such public servant he or she commits a specified offense, and (b)  
14 the state or any political subdivision thereof or any governmental  
15 instrumentality within the state is the owner of the property.

16 2. A "specified offense" is an offense defined by any of the following  
17 provisions of this chapter: section 155.25 (petit larceny); section  
18 155.30 (grand larceny in the fourth degree); section 155.35 (grand  
19 larceny in the third degree); section 155.40 (grand larceny in the  
20 second degree); section 155.42 (grand larceny in the first degree);  
21 section 190.60 (scheme to defraud in the [second] FIFTH degree); SECTION  
22 190.62 (SCHEME TO DEFRAUD IN THE FOURTH DEGREE); SECTION 190.63 (SCHEME  
23 TO DEFRAUD IN THE THIRD DEGREE); SECTION 190.64 (SCHEME TO DEFRAUD IN  
24 THE SECOND DEGREE); or section 190.65 (scheme to defraud in the first  
25 degree).

26 S 35. Section 190.77 of the penal law, as amended by chapter 226 of  
27 the laws of 2008, subdivision 1 as separately amended by chapter 279 of  
28 the laws of 2008, is amended to read as follows:

29 S 190.77 Offenses involving theft of identity; definitions.

30 1. For the purposes of sections 190.78, 190.79, 190.80 [and],  
31 190.80-a, 190.80-B, 190.80-C and 190.85 of this article "personal iden-  
32 tifying information" means a person's name, address, telephone number,  
33 date of birth, driver's license number, social security number, place of  
34 employment, mother's maiden name, financial services account number or  
35 code, savings account number or code, checking account number or code,  
36 brokerage account number or code, credit card account number or code,  
37 debit card number or code, automated teller machine number or code,  
38 taxpayer identification number, computer system password, signature or  
39 copy of a signature, electronic signature, unique biometric data that is  
40 a fingerprint, voice print, retinal image or iris image of another  
41 person, telephone calling card number, mobile identification number or  
42 code, electronic serial number or personal identification number, or any  
43 other name, number, code or information that may be used alone or in  
44 conjunction with other such information to assume the identity of another  
45 person.

46 2. For the purposes of sections 190.78, 190.79, 190.80, 190.80-a,  
47 190.80-B, 190.80-C, 190.81, 190.82 and 190.83 of this article:

48 a. "electronic signature" shall have the same meaning as defined in  
49 subdivision three of section three hundred two of the state technology  
50 law.

51 b. "personal identification number" means any number or code which may  
52 be used alone or in conjunction with any other information to assume the  
53 identity of another person or access financial resources or credit of  
54 another person.

55 c. "member of the armed forces" shall mean a person in the military  
56 service of the United States or the military service of the state,

1 including but not limited to, the armed forces of the United States, the  
2 army national guard, the air national guard, the New York naval militia,  
3 the New York guard, and such additional forces as may be created by the  
4 federal or state government as authorized by law.

5 S 36. Subdivision 2 of section 190.83 of the penal law, as separately  
6 amended by chapters 226 and 279 of the laws of 2008, is amended to read  
7 as follows:

8 2. he or she has been previously convicted within the last five years  
9 of identity theft in the third degree as defined in section [190.78]  
10 190.80, identity theft in the second degree as defined in section  
11 [190.79] 190.80-A, identity theft in the first degree as defined in  
12 section [190.80] 190.80-B, unlawful possession of personal identifica-  
13 tion information in the third degree as defined in section 190.81,  
14 unlawful possession of personal identification information in the second  
15 degree as defined in section 190.82, unlawful possession of personal  
16 identification information in the first degree as defined in this  
17 section, [unlawful] CRIMINAL possession of a skimmer device in the  
18 second degree as defined in section 190.85, [unlawful] CRIMINAL  
19 possession of a skimmer device in the first degree as defined in section  
20 190.86, grand larceny in the fourth degree as defined in section 155.30,  
21 grand larceny in the third degree as defined in section 155.35, grand  
22 larceny in the second degree as defined in section 155.40 or grand  
23 larceny in the first degree as defined in section 155.42 of this chap-  
24 ter; or

25 S 37. Paragraph (s) of subdivision 8 of section 700.05 of the criminal  
26 procedure law, as added by chapter 619 of the laws of 2002, is amended  
27 to read as follows:

28 (s) Identity theft in the second degree, as defined in section  
29 [190.79] 190.80-A of the penal law, identity theft in the first degree,  
30 as defined in section [190.80] 190.80-B of the penal law, unlawful  
31 possession of personal identification information in the second degree,  
32 as defined in section 190.82 of the penal law, and unlawful possession  
33 of personal identification information in the first degree, as defined  
34 in section 190.83 of the penal law.

35 S 38. Paragraph (a) of subdivision 3 of section 490.05 of the penal  
36 law, as amended by section 7 of part A of chapter 1 of the laws of 2004,  
37 is amended to read as follows:

38 (a) "Specified offense" for purposes of this article means a class A  
39 felony offense other than an offense as defined in article two hundred  
40 twenty, a violent felony offense as defined in section 70.02,  
41 manslaughter in the second degree as defined in section 125.15, criminal  
42 tampering in the first degree as defined in section 145.20, identity  
43 theft in the second degree as defined in section [190.79] 190.80-A,  
44 identity theft in the first degree as defined in section [190.80]  
45 190.80-B, unlawful possession of personal identification information in  
46 the second degree as defined in section 190.82, unlawful possession of  
47 personal identification information in the first degree as defined in  
48 section 190.83, money laundering in support of terrorism in the fourth  
49 degree as defined in section 470.21, money laundering in support of  
50 terrorism in the third degree as defined in section 470.22, money laun-  
51 dering in support of terrorism in the second degree as defined in  
52 section 470.23, money laundering in support of terrorism in the first  
53 degree as defined in section 470.24 of this chapter, and includes an  
54 attempt or conspiracy to commit any such offense.

55 S 39. Subdivision 1 and paragraph (b) of subdivision 4 of section  
56 60.27 of the penal law, subdivision 1 as amended by chapter 279 of the



1 laws of 2008, and paragraph (b) of subdivision 4 as amended by chapter  
2 313 of the laws of 2011, are amended to read as follows:

3 1. In addition to any of the dispositions authorized by this article,  
4 the court shall consider restitution or reparation to the victim of the  
5 crime and may require restitution or reparation as part of the sentence  
6 imposed upon a person convicted of an offense, and after providing the  
7 district attorney with an opportunity to be heard in accordance with the  
8 provisions of this subdivision, require the defendant to make restitu-  
9 tion of the fruits of his or her offense or reparation for the actual  
10 out-of-pocket loss caused thereby and, in the case of a violation of  
11 section 190.78, 190.79, 190.80, 190.80-A, 190.80-B, 190.82 or 190.83 of  
12 this chapter, any costs or losses incurred due to any adverse action  
13 taken against the victim. The district attorney shall where appropriate,  
14 advise the court at or before the time of sentencing that the victim  
15 seeks restitution or reparation, the extent of injury or economic loss  
16 or damage of the victim, and the amount of restitution or reparation  
17 sought by the victim in accordance with his or her responsibilities  
18 under subdivision two of section 390.50 of the criminal procedure law  
19 and article twenty-three of the executive law. The court shall hear and  
20 consider the information presented by the district attorney in this  
21 regard. In that event, or when the victim impact statement reports that  
22 the victim seeks restitution or reparation, the court shall require,  
23 unless the interests of justice dictate otherwise, in addition to any of  
24 the dispositions authorized by this article that the defendant make  
25 restitution of the fruits of the offense and reparation for the actual  
26 out-of-pocket loss and, in the case of a violation of section 190.78,  
27 190.79, 190.80, 190.82 or 190.83 of this chapter, any costs or losses  
28 incurred due to any adverse action, caused thereby to the victim. In the  
29 event that restitution or reparation are not ordered, the court shall  
30 clearly state its reasons on the record. Adverse action as used in this  
31 subdivision shall mean and include actual loss incurred by the victim,  
32 including an amount equal to the value of the time reasonably spent by  
33 the victim attempting to remediate the harm incurred by the victim from  
34 the offense, and the consequential financial losses from such action.

35 (b) the term "victim" shall include the victim of the offense, the  
36 representative of a crime victim as defined in subdivision six of  
37 section six hundred twenty-one of the executive law, an individual whose  
38 identity was assumed or whose personal identifying information was used  
39 in violation of section 190.78, 190.79 [or], 190.80, 190.80-A OR  
40 190.80-B of this chapter, or any person who has suffered a financial  
41 loss as a direct result of the acts of a defendant in violation of  
42 section 190.78, 190.79, 190.80, 190.80-A, 190.80-B, 190.82 or 190.83 of  
43 this chapter, a good samaritan as defined in section six hundred twen-  
44 ty-one of the executive law and the office of victim services or other  
45 governmental agency that has received an application for or has provided  
46 financial assistance or compensation to the victim. A victim shall also  
47 mean any owner or lawful producer of a master recording, or a trade  
48 association that represents such owner or lawful producer, that has  
49 suffered injury as a result of an offense as defined in article two  
50 hundred seventy-five of this chapter.

51 S 40. This act shall take effect immediately.