

4072--B

2015-2016 Regular Sessions

I N S E N A T E

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Introduced by Sens. GOLDEN, CROCI, DeFRANCISCO, FUNKE, GALLIVAN, GRIFFO, LARKIN, LITTLE, NOZZOLIO, ORTT, SEWARD -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- 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

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

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1 extended a period or under such circumstances that the major portion of
2 its economic value or benefit is lost to him OR HER, or (b) to dispose
3 of the property in such manner or under such circumstances as to render
4 it unlikely that an owner will recover such property. WHEN THE PROPERTY
5 IS PERSONAL IDENTIFYING INFORMATION, COMPUTER DATA OR COMPUTER PROGRAM,
6 TO DEPRIVE ANOTHER OF ITS MEANS TO OBTAIN IT OR CAUSE A THIRD PERSON TO
7 OBTAIN IT UNDER SUCH CIRCUMSTANCES THAT A SUBSTANTIAL PORTION OF THE
8 ECONOMIC BENEFIT OR VALUE OF HAVING CONTROL OVER IT OR AUTHORITY OVER
9 ITS USE IS LOST TO AN OWNER. TO DEPRIVE ANOTHER OF SERVICE IS TO USE OR
10 ACCESS A SERVICE OR CAUSE A THIRD PERSON TO USE OR ACCESS A SERVICE
11 UNDER SUCH CIRCUMSTANCES THAT SOME OF THE ECONOMIC BENEFIT OR VALUE OF
12 HAVING CONTROL OR AUTHORITY OVER PROVIDING THE SERVICE IS LOST TO AN
13 OWNER.

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

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

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

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

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

47 (F) BY THEFT OF SERVICE. THEFT OF SERVICE MEANS EITHER: (I) USING OR
48 ACCESSING A SERVICE IN A MANNER THAT OTHERWISE REQUIRES PAYMENT AND
49 INTENTIONALLY FAILING TO PAY FOR SUCH USE OR ACCESS BY EITHER TAMPERING
50 WITHOUT AUTHORITY WITH A DELIVERY, PAYMENT, OR MEASUREMENT DEVICE OR
51 MECHANISM, OR BY ENTERING OR LEAVING PREMISES WHERE THE SERVICE IS
52 PROVIDED BY STEALTH OR BY EVADING A PHYSICAL BARRIER, OR (II) USING OR
53 ACCESSING A SERVICE IN A MANNER THAT OTHERWISE REQUIRES PAYMENT OR THE
54 PRESENTATION OF PERSONAL IDENTIFYING INFORMATION AND USING OR PRESENTING
55 A FORM OF PAYMENT OR PERSONAL IDENTIFYING INFORMATION THE ACTOR KNOWS HE

1 OR SHE IS NOT AUTHORIZED TO USE OR KNOWS IS EXPIRED OR FORGED OR OTHER-
2 WISE NOT VALID.

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

5 1. Except as otherwise specified in this section, value means the
6 market value of the property at the time and place of the crime, or if
7 such cannot be satisfactorily ascertained, the cost of replacement of
8 the property within a reasonable time after the crime. WITH REGARD TO
9 SERVICE, VALUE SHALL ALSO MEAN THE COST OF PROVIDING THE SERVICE AT THE
10 TIME OF THE CRIME, AND WITH REGARD TO THE VALUE OF COMPUTER DATA OR
11 COMPUTER PROGRAM VALUE SHALL MEAN THE REPLACEMENT COST OR THE MARKET
12 VALUE AT THE TIME AND PLACE OF THE CRIME, OR THE COST TO WRITE OR DEVEL-
13 OP SUCH DATA AND/OR PROGRAM, WHICHEVER IS GREATER.

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

16 S 155.23 PETIT THEFT OF SERVICE.

17 A PERSON IS GUILTY OF PETIT THEFT OF SERVICE WHEN HE OR SHE STEALS A
18 SERVICE.

19 PETIT THEFT OF SERVICE IS A CLASS B MISDEMEANOR.

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

21 S 155.25 Petit larceny.

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

25 Petit larceny is a class A misdemeanor.

26 S 6. The opening paragraph and subdivisions 1, 4 and 6 of section
27 155.30 of the penal law, the opening paragraph and subdivisions 1 and 6
28 as amended by chapter 515 of the laws of 1986, subdivision 4 as amended
29 by chapter 556 of the laws of 1987, are amended to read as follows:

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

32 1. The value of the property OR SERVICE exceeds one thousand dollars;
33 or

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

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

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

40 S 155.35 Grand larceny in the third degree.

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

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

44 2. the property is an automated teller machine or the contents of an
45 automated teller machine, OR

46 3. THE PROPERTY IS PERSONAL IDENTIFYING INFORMATION OF TWENTY-FIVE OR
47 MORE PERSONS.

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

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

51 S 155.40 Grand larceny in the second degree.

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

54 1. The value of the property OR SERVICE exceeds fifty thousand
55 dollars; or

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

9 3. THE PROPERTY IS PERSONAL IDENTIFYING INFORMATION OF ONE HUNDRED OR
10 MORE PERSONS.

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

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

14 S 155.42 Grand larceny in the first degree.

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

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

20 S 10. Subdivisions 5 and 8 of section 156.00 of the penal law, subdi-
21 vision 5 as amended and subdivision 8 as added by chapter 558 of the
22 laws of 2006, are amended to read as follows:

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

25 (a) contains records of the medical history or medical treatment of an
26 identified or readily identifiable individual or individuals. This term
27 shall not apply to the gaining access to or duplication solely of the
28 medical history or medical treatment records of a person by that person
29 or by another specifically authorized by the person whose records are
30 gained access to or duplicated; or

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

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

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

1 person knew that such access was without permission or after actual
2 notice to such person, that such access was without permission.

3 Proof that such person used or accessed a computer, computer service
4 or computer network through the knowing use of a set of instructions,
5 code or computer program that bypasses, defrauds or otherwise circum-
6 vents a security measure installed or used with the user's authorization
7 on the computer, computer service or computer network shall be presump-
8 tive evidence that such person used or accessed such computer, computer
9 service or computer network without authorization.

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

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

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

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

20 S 12. Section 156.25 of the penal law, as amended by chapter 89 of the
21 laws of 1993, subdivision 2 as amended by chapter 376 of the laws of
22 1997, is amended to read as follows:

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

24 A person is guilty of computer tampering in the third degree when he
25 OR SHE commits the crime of computer tampering in the [fourth] FIFTH
26 degree and:

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

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

31 3. he OR SHE intentionally alters in any manner or destroys computer
32 material; or

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

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

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

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

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

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

45 2. computer material that contains records of the medical history or
46 medical treatment of an identified or readily identifiable individual or
47 individuals and as a result of such alteration or destruction, such
48 individual or individuals suffer serious physical injury, and he or she
49 is aware of and consciously disregards a substantial and unjustifiable
50 risk that such serious physical injury may occur.

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

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

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

55 A person is guilty of computer tampering in the [first] SECOND degree
56 when he OR SHE commits the crime of computer tampering in the fourth

1 degree and he OR SHE intentionally alters in any manner or destroys
2 computer data or a computer program so as to cause damages in an aggre-
3 gate amount exceeding fifty thousand dollars.

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

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

7 S 156.28 COMPUTER TAMPERING IN THE FIRST DEGREE.

8 A PERSON IS GUILTY OF COMPUTER TAMPERING IN THE FIRST DEGREE WHEN HE
9 OR SHE COMMITS THE CRIME OF COMPUTER TAMPERING IN THE FIFTH DEGREE AND
10 HE OR SHE INTENTIONALLY ALTERS IN ANY MANNER OR DESTROYS COMPUTER DATA
11 OR A COMPUTER PROGRAM AND THEREBY CAUSES DAMAGES IN AN AGGREGATE AMOUNT
12 OF ONE MILLION DOLLARS OR MORE.

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

14 S 16. The penal law is amended by adding five new sections 156.60,
15 156.65, 156.70, 156.75 and 156.80 to read as follows:

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

18 A PERSON IS GUILTY OF DENIAL OF SERVICE ATTACK ON A COMPUTER, COMPUTER
19 SERVICE, COMPUTER PROGRAM, OR COMPUTER NETWORK IN THE FIFTH DEGREE WHEN
20 HE OR SHE ACTING ALONE OR WITH OTHERS KNOWINGLY CAUSES THE TRANSMISSION
21 OF A PROGRAM, INFORMATION, CODE, OR COMMAND, OR OTHER ELECTRONIC COMMU-
22 NICATION, AND AS A RESULT OF SUCH CONDUCT, INTENTIONALLY MAKES THE
23 COMPUTER, COMPUTER SERVICE, COMPUTER PROGRAM, OR COMPUTER NETWORK TEMPO-
24 RARILY OR INDEFINITELY UNAVAILABLE TO ITS INTENDED USERS.

25 DENIAL OF SERVICE ATTACK ON A COMPUTER, COMPUTER SERVICE, COMPUTER
26 PROGRAM, OR COMPUTER NETWORK IN THE FIFTH DEGREE IS A CLASS A MISDEMEA-
27 NOR.

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

30 A PERSON IS GUILTY OF DENIAL OF SERVICE ATTACK ON A COMPUTER, COMPUTER
31 SERVICE, COMPUTER PROGRAM, OR COMPUTER NETWORK IN THE FOURTH DEGREE WHEN
32 HE OR SHE COMMITS THE CRIME OF DENIAL OF SERVICE ATTACK ON A COMPUTER,
33 COMPUTER SERVICE, COMPUTER PROGRAM, OR COMPUTER NETWORK IN THE FIFTH
34 DEGREE AND THEREBY CAUSES DAMAGES OR LOSS THAT EXCEEDS ONE THOUSAND
35 DOLLARS TO ANOTHER PERSON OR PERSONS, AND/OR ONE OR MORE FINANCIAL
36 INSTITUTIONS AND/OR OTHER BUSINESSES.

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

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

41 A PERSON IS GUILTY OF DENIAL OF SERVICE ATTACK ON A COMPUTER IN THE
42 THIRD DEGREE WHEN HE OR SHE COMMITS THE CRIME OF DENIAL OF SERVICE
43 ATTACK ON A COMPUTER, COMPUTER SERVICE, COMPUTER PROGRAM, OR COMPUTER
44 NETWORK IN THE FIFTH DEGREE AND THEREBY CAUSES DAMAGES OR LOSS THAT
45 EXCEEDS THREE THOUSAND DOLLARS TO ANOTHER PERSON OR PERSONS, AND/OR TO
46 ONE OR MORE FINANCIAL INSTITUTIONS AND/OR OTHER BUSINESSES, OR COMMITS
47 OR ATTEMPTS TO COMMIT A CLASS D FELONY OR HIGHER LEVEL CRIME OR ACTS AS
48 AN ACCESSORY TO THE COMMISSION OF A CLASS D OR HIGHER LEVEL FELONY.

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

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

53 A PERSON IS GUILTY OF DENIAL OF SERVICE ATTACK ON A COMPUTER, COMPUTER
54 SERVICE, COMPUTER PROGRAM, OR COMPUTER NETWORK IN THE SECOND DEGREE WHEN
55 HE OR SHE COMMITS THE CRIME OF DENIAL OF SERVICE ATTACK ON A COMPUTER,
56 COMPUTER SERVICE, COMPUTER PROGRAM, OR COMPUTER NETWORK IN THE FIFTH

1 DEGREE AND THEREBY CAUSES DAMAGES OR LOSS THAT EXCEEDS FIFTY THOUSAND
2 DOLLARS TO ANOTHER PERSON OR PERSONS, AND/OR FINANCIAL INSTITUTIONS
3 AND/OR OTHER BUSINESSES, OR COMMITS OR ATTEMPTS TO COMMIT A CLASS C
4 FELONY OR HIGHER LEVEL CRIME OR ACTS AS AN ACCESSORY IN THE COMMISSION
5 OF A CLASS C OR HIGHER LEVEL FELONY.

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

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

10 A PERSON IS GUILTY OF DENIAL OF SERVICE ATTACK ON A COMPUTER, COMPUTER
11 SERVICE, COMPUTER PROGRAM, OR COMPUTER NETWORK IN THE FIRST DEGREE WHEN
12 HE OR SHE COMMITS THE CRIME OF DENIAL OF SERVICE ATTACK ON A COMPUTER,
13 COMPUTER SERVICE, COMPUTER PROGRAM, OR COMPUTER NETWORK IN THE FIFTH
14 DEGREE AND THEREBY CAUSES DAMAGES OR LOSS THAT EXCEEDS ONE MILLION
15 DOLLARS TO ANOTHER PERSON OR PERSONS, AND/OR ONE OR MORE FINANCIAL
16 INSTITUTIONS AND/OR OTHER BUSINESSES, OR COMMITS OR ATTEMPTS TO COMMIT A
17 CLASS B FELONY OR HIGHER LEVEL CRIME OR ACTS AS AN ACCESSORY IN THE
18 COMMISSION ON A CLASS B OR HIGHER LEVEL FELONY.

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

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

23 2. The property consists of a credit card, debit card or public bene-
24 fit card, OR PERSONAL IDENTIFYING INFORMATION AS DEFINED IN SECTION
25 190.77 OF THIS CHAPTER; or

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

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

29 A person is guilty of criminal possession of stolen property in the
30 third degree when he OR SHE knowingly possesses stolen property, with
31 intent to benefit himself OR HERSELF or a person other than an owner
32 thereof or to impede the recovery by an owner thereof, and when the
33 value of the property exceeds three thousand dollars, OR THE PROPERTY
34 CONSISTED OF THE PERSONAL IDENTIFYING INFORMATION OF TWENTY-FIVE OR MORE
35 PERSONS.

36 Criminal possession of stolen property in the third degree is a class
37 D felony.

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

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

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

48 Criminal possession of stolen property in the second degree is a class
49 C felony.

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

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

53 A person is guilty of criminal possession of stolen property in the
54 first degree when he OR SHE knowingly possesses stolen property, with
55 intent to benefit himself OR HERSELF or a person other than an owner
56 thereof or to impede the recovery by an owner, and when the value of the

1 property exceeds one million dollars, OR THE PROPERTY CONSISTS OF THE
2 PERSONAL IDENTIFYING INFORMATION OF ONE THOUSAND OR MORE PERSONS.

3 Criminal possession of stolen property in the first degree is a class
4 B felony.

5 S 21. Section 190.60 of the penal law, as amended by chapter 491 of
6 the laws of 1992, subdivision 1 as amended by chapter 357 of the laws of
7 1996, is amended to read as follows:

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

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

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

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

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

23 S 190.62 SCHEME TO DEFRAUD IN THE FOURTH DEGREE.

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

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

27 2. THE VALUE OF THE PROPERTY OR SERVICE OBTAINED EXCEEDS ONE THOUSAND
28 DOLLARS; OR

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

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

33 S 190.63 SCHEME TO DEFRAUD IN THE THIRD DEGREE.

34 A PERSON IS GUILTY OF A SCHEME TO DEFRAUD IN THE THIRD 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 TWENTY-FIVE OR MORE
37 PERSONS; OR

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

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

41 S 190.64 SCHEME TO DEFRAUD IN THE SECOND DEGREE.

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

44 1. INTENDS TO OBTAIN PROPERTY OR SERVICE FROM ONE HUNDRED OR MORE
45 PERSONS; OR

46 2. THE VALUE OF THE PROPERTY OR SERVICE OBTAINED EXCEEDS FIFTY THOU-
47 SAND DOLLARS.

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

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

51 S 190.65 Scheme to defraud in the first degree.

52 [1.] A person is guilty of a scheme to defraud in the first degree
53 when he or she[: (a)] engages in CONDUCT CONSTITUTING a scheme [consti-
54 tuting a systematic ongoing course of conduct with intent] to defraud
55 [ten] IN THE FIFTH DEGREE AND INTENDS TO OBTAIN PROPERTY OR SERVICE FROM
56 ONE THOUSAND or more persons or to obtain property from ten or more

1 persons by false or fraudulent pretenses, representations or promises,
2 and so obtains property from one or more of such persons; [or (b)
3 engages in a scheme constituting a systematic ongoing course of conduct
4 with intent to defraud more than one person or to obtain property from
5 more than one person by false or fraudulent pretenses, representations
6 or promises, and so obtains] AND VALUE OF THE property [with a value in
7 excess of one thousand dollars from one or more such persons; or (c)
8 engages in a scheme constituting a systematic ongoing course of conduct
9 with intent to defraud more than one person, more than one of whom is a
10 vulnerable elderly person as defined in subdivision three of section
11 260.30 of this chapter or to obtain property from more than one person,
12 more than one of whom is a vulnerable elderly person as defined in
13 subdivision three of section 260.30 of this chapter, by false or fraudu-
14 lent pretenses, representations or promises, and so obtains property
15 from one or more such persons.

16 2. In any prosecution under this section, it shall be necessary to
17 prove the identity of at least one person from whom the defendant so
18 obtained property, but it shall not be necessary to prove the identity
19 of any other intended victim, provided that in any prosecution under
20 paragraph (c) of subdivision one of this section, it shall be necessary
21 to prove the identity of at least one such vulnerable elderly person as
22 defined in subdivision three of section 260.30 of this chapter] OR
23 SERVICE OBTAINED EXCEEDS ONE MILLION DOLLARS.

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

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

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

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

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

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

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

38 S 25. Section 190.79 of the penal law, as added by chapter 619 of the
39 laws of 2002, subdivision 4 as amended by chapter 279 of the laws of
40 2008, is amended to read as follows:

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

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

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

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

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

54 4. commits the crime of identity theft in the [third] FIFTH degree as
55 defined in section 190.78 of this article and has been previously
56 convicted within the last [five years of identity theft in the third

1 degree as defined in section 190.78, identity theft in the second degree
2 as defined in this section, identity theft in the first degree as
3 defined in section 190.80, unlawful possession of personal identifica-
4 tion information in the third degree as defined in section 190.81,
5 unlawful possession of personal identification information in the second
6 degree as defined in section 190.82, unlawful possession of personal
7 identification information in the first degree as defined in section
8 190.83, unlawful possession of a skimmer device in the second degree as
9 defined in section 190.85, unlawful possession of a skimmer device in
10 the first degree as defined in section 190.86, grand larceny in the
11 fourth degree as defined in section 155.30, grand larceny in the third
12 degree as defined in section 155.35, grand larceny in the second degree
13 as defined in section 155.40 or grand larceny in the first degree as
14 defined in section 155.42 of this chapter] TEN YEARS, EXCLUDING ANY TIME
15 PERIOD DURING WHICH SUCH PERSON WAS INCARCERATED FOR ANY REASON, OF ANY
16 CRIME IN THIS ARTICLE OR ARTICLE ONE HUNDRED SEVENTY OF THIS CHAPTER, OR
17 OF ANY LARCENY CRIME AS DEFINED IN ARTICLE ONE HUNDRED FIFTY-FIVE OF
18 THIS CHAPTER, OR OF ANY CRIMINAL POSSESSION OF STOLEN PROPERTY CRIME AS
19 DEFINED IN ARTICLE ONE HUNDRED SIXTY-FIVE OF THIS CHAPTER; OR HE OR SHE
20 KNOWINGLY AND WITH INTENT TO DEFRAUD ASSUMES THE IDENTITY OF THREE OR
21 MORE PERSONS BY PRESENTING HIMSELF OR HERSELF AS THOSE PERSONS OR BY
22 ACTING AS THOSE PERSONS OR BY USING PERSONAL IDENTIFYING INFORMATION OF
23 ANY OF THOSE PERSONS AND THEREBY OBTAINS GOODS, MONEY, PROPERTY OR
24 SERVICES OR USES CREDIT IN THE NAME OF AT LEAST ONE SUCH PERSON, OR
25 CAUSES FINANCIAL LOSS TO AT LEAST ONE SUCH PERSON OR TO ANOTHER PERSON
26 OR PERSONS.

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

28 S 26. Section 190.80 of the penal law, as added by chapter 619 of the
29 laws of 2002, subdivision 4 as amended by chapter 279 of the laws of
30 2008, is amended to read as follows:

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

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

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

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

42 3. commits or attempts to commit a class D felony or higher level
43 crime or acts as an accessory in the commission of a class D or higher
44 level felony; or

45 4. commits the crime of identity theft in the [second] FOURTH degree
46 as defined in section 190.79 of this article and has been previously
47 convicted within the last [five years of identity theft in the third
48 degree as defined in section 190.78, identity theft in the second degree
49 as defined in section 190.79, identity theft in the first degree as
50 defined in this section, unlawful possession of personal identification
51 information in the third degree as defined in section 190.81, unlawful
52 possession of personal identification information in the second degree
53 as defined in section 190.82, unlawful possession of personal identifi-
54 cation information in the first degree as defined in section 190.83,
55 unlawful possession of a skimmer device in the second degree as defined
56 in section 190.85, unlawful possession of a skimmer device in the first

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

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

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

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

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

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

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

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

32 C. COMMITS OR ATTEMPTS TO COMMIT A CLASS C FELONY OR HIGHER LEVEL
33 CRIME OR ACTS AS AN ACCESSORY IN THE COMMISSION OF A CLASS C OR HIGHER
34 LEVEL FELONY; OR

35 D. COMMITS THE CRIME OF IDENTITY THEFT IN THE THIRD DEGREE AS DEFINED
36 IN SECTION 190.80 OF THIS ARTICLE AND HAS BEEN PREVIOUSLY CONVICTED
37 WITHIN THE LAST TEN YEARS, EXCLUDING ANY TIME DURING WHICH SUCH PERSON
38 WAS INCARCERATED FOR ANY REASON, OF ANY CRIME IN THIS ARTICLE OR ARTICLE
39 ONE HUNDRED SEVENTY OF THIS CHAPTER, OR ANY LARCENY CRIME AS DEFINED IN
40 ARTICLE ONE HUNDRED FIFTY-FIVE OF THIS CHAPTER, OR OF ANY CRIMINAL
41 POSSESSION OF STOLEN PROPERTY CRIME AS DEFINED IN ARTICLE ONE HUNDRED
42 SIXTY-FIVE OF THIS CHAPTER; OR

43 2. ASSUMES THE IDENTITY OF TWENTY-FIVE OR MORE PERSON BY PRESENTING
44 HIMSELF OR HERSELF AS THOSE OTHER PERSONS, OR BY ACTING AS THOSE OTHER
45 PERSONS, OR BY USING PERSONAL IDENTIFYING INFORMATION OF THOSE OTHER
46 PERSONS, AND THEREBY OBTAINS GOODS, MONEY, PROPERTY OR OR SERVICES OR
47 USES CREDIT IN THE NAME OF AT LEAST ONE SUCH PERSON, OR CAUSES FINANCIAL
48 LOSS TO AT LEAST ONE SUCH PERSON, OR TO ANOTHER PERSON OR PERSONS.

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

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

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

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

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

4 B. CAUSES FINANCIAL LOSS TO SUCH PERSON OR TO ANOTHER PERSON OR
5 PERSONS IN AN AGGREGATE AMOUNT THAT EXCEEDS FIVE HUNDRED THOUSAND
6 DOLLARS; OR

7 C. COMMITS OR ATTEMPTS TO COMMIT A CLASS B FELONY OR HIGHER LEVEL
8 CRIME OR ACT AS AN ACCESSORY IN THE COMMISSION OF A CLASS B OR HIGHER
9 LEVEL FELONY; OR

10 D. COMMITS THE CRIME OF IDENTITY THEFT IN THE SECOND DEGREE AS DEFINED
11 IN SECTION 190.80-A OF THIS ARTICLE AND HAS BEEN PREVIOUSLY CONVICTED
12 WITHIN THE LAST TEN YEARS, EXCLUDING ANY TIME DURING WHICH SUCH PERSON
13 WAS INCARCERATED FOR ANY REASON, OF ANY CRIME IN THIS ARTICLE OR ARTICLE
14 ONE HUNDRED SEVENTY OF THIS CHAPTER, OR OF ANY LARCENY CRIME AS DEFINED
15 IN ARTICLE ONE HUNDRED FIFTY-FIVE OF THIS CHAPTER, OR OF ANY CRIMINAL
16 POSSESSION OF STOLEN PROPERTY CRIME AS DEFINED IN ARTICLE ONE HUNDRED
17 SIXTY-FIVE OF THIS CHAPTER; OR

18 2. ASSUMES THE IDENTITY OF ONE HUNDRED OR MORE PERSONS BY PRESENTING
19 HIMSELF OR HERSELF AS THOSE OTHER PERSONS, OR BY ACTING AS THOSE OTHER
20 PERSONS, OR BY USING PERSONAL IDENTIFYING INFORMATION OF THOSE OTHER
21 PERSONS, AND THEREBY OBTAINS GOODS, MONEY, PROPERTY OR SERVICES OR USES
22 CREDIT IN THE NAME OF A LEAST ON SUCH PERSON, OR CAUSES FINANCIAL LOSS
23 TO AT LEAST ON SUCH PERSON, OR TO ANOTHER PERSON OR PERSONS.

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

25 S 190.80-c Aggravated identity theft.

26 A person is guilty of aggravated identity theft when he or she know-
27 ingly and with intent to defraud assumes the identity of another person
28 by presenting himself or herself as that other person, or by acting as
29 that other person or by using personal identifying information of that
30 other person, and knows that such person is a member of the armed forc-
31 es, and knows that such member is presently deployed outside of the
32 continental United States OR KNOWS THAT SUCH PERSON IS A VULNERABLE
33 ELDERLY PERSON OR A PHYSICALLY DISABLED PERSON AS SUCH TERMS ARE DEFINED
34 IN SECTION 260.31 OF THIS CHAPTER AND:

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

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

40 Aggravated identity theft is a class D felony.

41 S 28. Sections 190.85 and 190.86 of the penal law, as added by chapter
42 279 of the laws of 2008, are amended to read as follows:

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

45 1. A person is guilty of [unlawful] CRIMINAL possession of a skimmer
46 device in the second degree when he or she possesses a skimmer device
47 with the intent that such device be used in furtherance of the commis-
48 sion of the crime of identity theft [or unlawful possession of personal
49 identification information] as defined in this article, LARCENY AS
50 DEFINED IN ARTICLE ONE HUNDRED FIFTY-FIVE OF THIS CHAPTER; OR CRIMINAL
51 POSSESSION OF STOLEN PROPERTY AS DEFINED IN ARTICLE ONE HUNDRED
52 SIXTY-FIVE OF THIS CHAPTER.

53 2. For purposes of this article, "skimmer device" means a device
54 designed or adapted to obtain personal identifying information from a
55 credit card, debit card, public benefit card, access card or device, or
56 other card or device that contains personal identifying information.

1 [Unlawful] CRIMINAL possession of a skimmer device in the second
2 degree is a class [A misdemeanor] D FELONY.
3 S 190.86 [Unlawful] CRIMINAL possession of a skimmer device in the first
4 degree.

5 A person is guilty of [unlawful] CRIMINAL possession of a skimmer
6 device in the first degree when he or she commits the crime of [unlaw-
7 ful] CRIMINAL possession of a skimmer device in the second degree and he
8 or she has been previously convicted within the last [five years of
9 identity theft in the third degree as defined in section 190.78, identi-
10 ty theft in the second degree as defined in section 190.79, identity
11 theft in the first degree as defined in section 190.80, unlawful
12 possession of personal identification information in the third degree as
13 defined in section 190.81, unlawful possession of personal identifica-
14 tion information in the second degree as defined in section 190.82,
15 unlawful possession of personal identification information in the first
16 degree as defined in section 190.83, unlawful possession of a skimmer
17 device in the second degree as defined in section 190.85, unlawful
18 possession of a skimmer device in the first degree as defined in this
19 section, grand larceny in the fourth degree as defined in section
20 155.30, grand larceny in the third degree as defined in section 155.35,
21 grand larceny in the second degree as defined in section 155.40 or grand
22 larceny in the first degree as defined in section 155.42 of this chap-
23 ter] TEN YEARS, EXCLUDING ANY TIME DURING WHICH SUCH PERSON WAS INCAR-
24 CERATED FOR ANY REASON, FOR ANY CRIME IN THIS ARTICLE OR ARTICLE ONE
25 HUNDRED SEVENTY OF THIS CHAPTER, OR OF ANY LARCENY CRIME AS DEFINED IN
26 ARTICLE ONE HUNDRED FIFTY-FIVE OF THIS CHAPTER, OR OF ANY CRIMINAL
27 POSSESSION OF STOLEN PROPERTY CRIME AS DEFINED IN ARTICLE ONE HUNDRED
28 SIXTY-FIVE OF THIS CHAPTER.

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

31 S 29. Paragraph (1) of subdivision 4 of section 20.40 of the criminal
32 procedure law, as amended by section 3 of subpart C of part C of chapter
33 97 of the laws of 2011, is amended to read as follows:

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

49 S 30. Subdivision 2 of section 690.05 of the criminal procedure law,
50 as amended by chapter 504 of the laws of 1991, the opening paragraph as
51 amended by chapter 424 of the laws of 1998, is amended to read as
52 follows:

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

1 (a) a search of designated premises, or of a designated vehicle, or of
2 a designated person, OR OF AN ELECTRONIC COMMUNICATION SERVICE OR REMOTE
3 COMPUTING SERVICE, for the purpose of seizing designated property or
4 kinds of property, and to deliver any property so obtained to the court
5 which issued the warrant; or

6 (b) a search of a designated premises for the purpose of searching for
7 and arresting a person who is the subject of: (i) a warrant of arrest
8 issued pursuant to this chapter, a superior court warrant of arrest
9 issued pursuant to this chapter, or a bench warrant for a felony issued
10 pursuant to this chapter, where the designated premises is the dwelling
11 of a third party who is not the subject of the arrest warrant; or

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

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

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

29 1. A search warrant must direct a search of one or more of the
30 following:

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

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

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

35 (D) A DESIGNATED OR DESCRIBED ELECTRONIC COMMUNICATION SERVICE OR
36 REMOTE COMPUTING SERVICE.

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

39 3. THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION TO THE CONTRARY
40 NOTWITHSTANDING, A SEARCH WARRANT DIRECTING THE SEARCH OF A DESIGNATED
41 OR DESCRIBED ELECTRONIC COMMUNICATION SERVICE OR REMOTE COMPUTING
42 SERVICE, MAY BE EXECUTED ON ANY COMPANY, CORPORATION OR ENTITY WHICH IS
43 HEADQUARTERED OR LOCATED OUTSIDE OF THE STATE OF NEW YORK, AND WHICH
44 CONDUCTS ITS REGULAR BUSINESS IN NEW YORK OR THAT OFFERS ITS SERVICES TO
45 RESIDENTS OF NEW YORK. SERVICE ON ANY SUCH ELECTRONIC COMMUNICATION
46 SERVICE OR REMOTE COMPUTING SERVICE ENTITY MAY BE MADE BY PERSONAL
47 DELIVERY WITHIN THE STATE, BY REGISTERED OR CERTIFIED MAIL. SERVICE MAY
48 ALSO BE MADE BY FACSIMILE OR OTHER ELECTRONIC MEANS IF THE SERVICE IS
49 ACCOMPANIED WITH A CERTIFICATION FROM THE SENDER THAT SUCH SENDER IS A
50 POLICE OFFICER, DISTRICT ATTORNEY OR OTHER PUBLIC SERVANT SPECIFIED IN
51 SUBDIVISION ONE OF SECTION 690.05 OF THIS ARTICLE. IF AN ENTITY SHALL
52 REFUSE SUCH SERVICE, THEN SUCH POLICE OFFICER, DISTRICT ATTORNEY OR
53 OTHER PUBLIC SERVANT LOCATED WITHIN THE JURISDICTION IN WHICH THE ELEC-
54 TRONIC COMMUNICATION SERVICE OR REMOTE COMPUTING SERVICE ENTITY IS
55 LOCATED MAY SERVE THE WARRANT UPON SUCH ENTITY. A SEARCH WARRANT ISSUED
56 PURSUANT TO THIS SUBDIVISION SHALL BE LIMITED IN SCOPE TO THE DESIGNATED

1 OR DESCRIBED ELECTRONIC RECORDS OR DATA, EITHER IN PAPER OR ELECTRONIC
2 FORM, THAT ARE MADE, KEPT, OR MAINTAINED BY THE ELECTRONIC COMMUNICATION
3 SERVICE OR REMOTE COMPUTING SERVICE, AND SHALL NOT INCLUDE ANY OTHER
4 PHYSICAL OR TANGIBLE ITEMS. ANY ELECTRONIC RECORDS OR DATA RESPONSIVE TO
5 A SEARCH WARRANT ISSUED PURSUANT TO THIS SUBDIVISION SHALL BE ADMITTED
6 INTO EVIDENCE BEFORE THE GRAND JURY OR AT TRIAL IN ACCORD WITH THE RULES
7 AND LAWS OF NEW YORK STATE.

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

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

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

18 S 496.06 Public corruption.

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

25 2. A "specified offense" is an offense defined by any of the following
26 provisions of this chapter: section 155.25 (petit larceny); section
27 155.30 (grand larceny in the fourth degree); section 155.35 (grand
28 larceny in the third degree); section 155.40 (grand larceny in the
29 second degree); section 155.42 (grand larceny in the first degree);
30 section 190.60 (scheme to defraud in the [second] FIFTH degree); SECTION
31 190.62 (SCHEME TO DEFRAUD IN THE FOURTH DEGREE); SECTION 190.63 (SCHEME
32 TO DEFRAUD IN THE THIRD DEGREE); SECTION 190.64 (SCHEME TO DEFRAUD IN
33 THE SECOND DEGREE); or section 190.65 (scheme to defraud in the first
34 degree).

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

38 S 190.77 Offenses involving theft of identity; definitions.

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

55 2. For the purposes of sections 190.78, 190.79, 190.80, 190.80-a,
56 190.80-B, 190.80-C, 190.81, 190.82 and 190.83 of this article:

1 a. "electronic signature" shall have the same meaning as defined in
2 subdivision three of section three hundred two of the state technology
3 law.

4 b. "personal identification number" means any number or code which may
5 be used alone or in conjunction with any other information to assume the
6 identity of another person or access financial resources or credit of
7 another person.

8 c. "member of the armed forces" shall mean a person in the military
9 service of the United States or the military service of the state,
10 including but not limited to, the armed forces of the United States, the
11 army national guard, the air national guard, the New York naval militia,
12 the New York guard, and such additional forces as may be created by the
13 federal or state government as authorized by law.

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

17 2. he or she has been previously convicted within the last five years
18 of identity theft in the third degree as defined in section [190.78]
19 190.80, identity theft in the second degree as defined in section
20 [190.79] 190.80-A, identity theft in the first degree as defined in
21 section [190.80] 190.80-B, unlawful possession of personal identifica-
22 tion information in the third degree as defined in section 190.81,
23 unlawful possession of personal identification information in the second
24 degree as defined in section 190.82, unlawful possession of personal
25 identification information in the first degree as defined in this
26 section, [unlawful] CRIMINAL possession of a skimmer device in the
27 second degree as defined in section 190.85, [unlawful] CRIMINAL
28 possession of a skimmer device in the first degree as defined in section
29 190.86, grand larceny in the fourth degree as defined in section 155.30,
30 grand larceny in the third degree as defined in section 155.35, grand
31 larceny in the second degree as defined in section 155.40 or grand
32 larceny in the first degree as defined in section 155.42 of this chap-
33 ter; or

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

37 (s) Identity theft in the second degree, as defined in section
38 [190.79] 190.80-A of the penal law, identity theft in the first degree,
39 as defined in section [190.80] 190.80-B of the penal law, unlawful
40 possession of personal identification information in the second degree,
41 as defined in section 190.82 of the penal law, and unlawful possession
42 of personal identification information in the first degree, as defined
43 in section 190.83 of the penal law.

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

47 (a) "Specified offense" for purposes of this article means a class A
48 felony offense other than an offense as defined in article two hundred
49 twenty, a violent felony offense as defined in section 70.02,
50 manslaughter in the second degree as defined in section 125.15, criminal
51 tampering in the first degree as defined in section 145.20, identity
52 theft in the second degree as defined in section [190.79] 190.80-A,
53 identity theft in the first degree as defined in section [190.80]
54 190.80-B, unlawful possession of personal identification information in
55 the second degree as defined in section 190.82, unlawful possession of
56 personal identification information in the first degree as defined in

1 section 190.83, money laundering in support of terrorism in the fourth
2 degree as defined in section 470.21, money laundering in support of
3 terrorism in the third degree as defined in section 470.22, money laun-
4 dering in support of terrorism in the second degree as defined in
5 section 470.23, money laundering in support of terrorism in the first
6 degree as defined in section 470.24 of this chapter, and includes an
7 attempt or conspiracy to commit any such offense.

8 S 39. Subdivision 1 and paragraph (b) of subdivision 4 of section
9 60.27 of the penal law, subdivision 1 as amended by chapter 279 of the
10 laws of 2008, and paragraph (b) of subdivision 4 as amended by chapter
11 313 of the laws of 2011, are amended to read as follows:

12 1. In addition to any of the dispositions authorized by this article,
13 the court shall consider restitution or reparation to the victim of the
14 crime and may require restitution or reparation as part of the sentence
15 imposed upon a person convicted of an offense, and after providing the
16 district attorney with an opportunity to be heard in accordance with the
17 provisions of this subdivision, require the defendant to make restitu-
18 tion of the fruits of his or her offense or reparation for the actual
19 out-of-pocket loss caused thereby and, in the case of a violation of
20 section 190.78, 190.79, 190.80, 190.80-A, 190.80-B, 190.82 or 190.83 of
21 this chapter, any costs or losses incurred due to any adverse action
22 taken against the victim. The district attorney shall where appropriate,
23 advise the court at or before the time of sentencing that the victim
24 seeks restitution or reparation, the extent of injury or economic loss
25 or damage of the victim, and the amount of restitution or reparation
26 sought by the victim in accordance with his or her responsibilities
27 under subdivision two of section 390.50 of the criminal procedure law
28 and article twenty-three of the executive law. The court shall hear and
29 consider the information presented by the district attorney in this
30 regard. In that event, or when the victim impact statement reports that
31 the victim seeks restitution or reparation, the court shall require,
32 unless the interests of justice dictate otherwise, in addition to any of
33 the dispositions authorized by this article that the defendant make
34 restitution of the fruits of the offense and reparation for the actual
35 out-of-pocket loss and, in the case of a violation of section 190.78,
36 190.79, 190.80, 190.82 or 190.83 of this chapter, any costs or losses
37 incurred due to any adverse action, caused thereby to the victim. In the
38 event that restitution or reparation are not ordered, the court shall
39 clearly state its reasons on the record. Adverse action as used in this
40 subdivision shall mean and include actual loss incurred by the victim,
41 including an amount equal to the value of the time reasonably spent by
42 the victim attempting to remediate the harm incurred by the victim from
43 the offense, and the consequential financial losses from such action.

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

1 association that represents such owner or lawful producer, that has
2 suffered injury as a result of an offense as defined in article two
3 hundred seventy-five of this chapter.
4 S 40. This act shall take effect immediately.