

4072

2015-2016 Regular Sessions

I N S E N A T E

February 26, 2015

Introduced by Sens. GOLDEN, GALLIVAN, GRIFFO, LARKIN, LITTLE, ORTT,
SEWARD -- read twice and ordered printed, and when printed to be
committed to the Committee on Codes

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 ASSEM-
BLY, 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,

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

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

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

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

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

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

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

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

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

1. Except as otherwise specified in this section, value means the market value of the property at the time and place of the crime, or if

such cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the crime. WITH REGARD TO SERVICE, VALUE SHALL ALSO MEAN THE COST OF PROVIDING THE SERVICE AT THE TIME OF THE CRIME, AND WITH REGARD TO THE VALUE OF COMPUTER DATA OR COMPUTER PROGRAM VALUE SHALL MEAN THE REPLACEMENT COST OR THE MARKET VALUE AT THE TIME AND PLACE OF THE CRIME, OR THE COST TO WRITE OR DEVELOP SUCH DATA AND/OR PROGRAM, WHICHEVER IS GREATER.

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

S 155.23 PETIT THEFT OF SERVICE.

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

PETIT THEFT OF SERVICE IS A CLASS B MISDEMEANOR.

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

S 155.25 Petit larceny.

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

Petit larceny is a class A misdemeanor.

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

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

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

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

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

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

S 155.35 Grand larceny in the third degree.

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

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

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

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

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

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

S 155.40 Grand larceny in the second degree.

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

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

2. The property OR SERVICE, regardless of its nature and value, is obtained by extortion committed by instilling in the victim a fear that the actor or another person will (a) cause physical injury to some person in the future, or (b) cause damage to property, or (c) use or abuse his position as a public servant by engaging in conduct within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person 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. Subdivision 8 of section 156.00 of the penal law, as added by
13 chapter 558 of the laws of 2006, is amended to read as follows:

14 8. "Without authorization" means to use or to access a computer,
15 computer service or computer network without the permission of the owner
16 or lessor or someone licensed or privileged by the owner or lessor where
17 such person knew that his or her use or access was without permission or
18 after actual notice to such person that such use or access was without
19 permission, OR THAT SUCH USE OR ACCESS WAS FOR PURPOSES OTHER THAN THOSE
20 FOR WHICH PERMISSION WAS GRANTED BY THE OWNER, LESSOR, OR SOMEONE
21 LICENSED OR PRIVILEGED BY SUCH OWNER OR LESSOR. It shall also mean the
22 access of a computer service by a person without permission where such
23 person knew that such access was without permission or after actual
24 notice to such person, that such access was without permission.

25 Proof that such person used or accessed a computer, computer service
26 or computer network through the knowing use of a set of instructions,
27 code or computer program that bypasses, defrauds or otherwise circum-
28 vents a security measure installed or used with the user's authorization
29 on the computer, computer service or computer network shall be presump-
30 tive evidence that such person used or accessed such computer, computer
31 service or computer network without authorization.

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

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

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

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

42 S 12. Section 156.25 of the penal law, as amended by chapter 89 of the
43 laws of 1993, subdivision 2 as amended by chapter 376 of the laws of
44 1997, is amended to read as follows:

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

46 A person is guilty of computer tampering in the third degree when he
47 OR SHE commits the crime of computer tampering in the [fourth] FIFTH
48 degree and:

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

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

53 3. he OR SHE intentionally alters in any manner or destroys computer
54 material; or

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

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

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

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

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

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

13 2. computer material that contains records of the medical history or
14 medical treatment of an identified or readily identifiable individual or
15 individuals and as a result of such alteration or destruction, such
16 individual or individuals suffer serious physical injury, and he or she
17 is aware of and consciously disregards a substantial and unjustifiable
18 risk that such serious physical injury may occur.

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

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

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

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

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

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

31 S 156.28 COMPUTER TAMPERING IN THE FIRST DEGREE.

32 A PERSON IS GUILTY OF COMPUTER TAMPERING IN THE FIRST DEGREE WHEN HE
33 OR SHE COMMITS THE CRIME OF COMPUTER TAMPERING IN THE FIFTH DEGREE AND
34 HE OR SHE INTENTIONALLY ALTERS IN ANY MANNER OR DESTROYS COMPUTER DATA
35 OR A COMPUTER PROGRAM AND THEREBY CAUSES DAMAGES IN AN AGGREGATE AMOUNT
36 OF ONE MILLION DOLLARS OR MORE.

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

38 S 16. The penal law is amended by adding five new sections 156.60,
39 156.65, 156.70, 156.75 and 156.80 to read as follows:

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

42 A PERSON IS GUILTY OF DENIAL OF SERVICE ATTACK ON A COMPUTER, COMPUTER
43 SERVICE, COMPUTER PROGRAM, OR COMPUTER NETWORK IN THE FIFTH DEGREE WHEN
44 HE OR SHE ACTING ALONE OR WITH OTHERS KNOWINGLY CAUSES THE TRANSMISSION
45 OF A PROGRAM, INFORMATION, CODE, OR COMMAND, OR OTHER ELECTRONIC COMMU-
46 NICATION, AND AS A RESULT OF SUCH CONDUCT, INTENTIONALLY MAKES THE
47 COMPUTER, COMPUTER SERVICE, COMPUTER PROGRAM, OR COMPUTER NETWORK TEMPO-
48 RARILY OR INDEFINITELY UNAVAILABLE TO ITS INTENDED USERS.

49 DENIAL OF SERVICE ATTACK ON A COMPUTER, COMPUTER SERVICE, COMPUTER
50 PROGRAM, OR COMPUTER NETWORK IN THE FIFTH DEGREE IS A CLASS A MISDEMEA-
51 NOR.

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

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

1 COMPUTER SERVICE, COMPUTER PROGRAM, OR COMPUTER NETWORK IN THE FIFTH
2 DEGREE AND THEREBY CAUSES DAMAGES OR LOSS THAT EXCEEDS ONE THOUSAND
3 DOLLARS TO ANOTHER PERSON OR PERSONS, AND/OR ONE OR MORE FINANCIAL
4 INSTITUTIONS AND/OR OTHER BUSINESSES.

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

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

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

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

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

21 A PERSON IS GUILTY OF DENIAL OF SERVICE ATTACK ON A COMPUTER, COMPUTER
22 SERVICE, COMPUTER PROGRAM, OR COMPUTER NETWORK IN THE SECOND 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 FIFTY THOUSAND
26 DOLLARS TO ANOTHER PERSON OR PERSONS, AND/OR FINANCIAL INSTITUTIONS
27 AND/OR OTHER BUSINESSES, OR COMMITS OR ATTEMPTS TO COMMIT A CLASS C
28 FELONY OR HIGHER LEVEL CRIME OR ACTS AS AN ACCESSORY IN THE COMMISSION
29 OF A CLASS C OR HIGHER LEVEL FELONY.

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

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

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

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

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

47 2. The property consists of a credit card, debit card or public bene-
48 fit card, OR PERSONAL IDENTIFYING INFORMATION AS DEFINED IN SECTION
49 190.77 OF THIS CHAPTER; or

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

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

53 A person is guilty of criminal possession of stolen property in the
54 third 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 thereof, and when the

1 value of the property exceeds three thousand dollars, OR THE PROPERTY
2 CONSISTED OF THE PERSONAL IDENTIFYING INFORMATION OF TWENTY-FIVE OR MORE
3 PERSONS.

4 Criminal possession of stolen property in the third degree is a class
5 D felony.

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

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

9 A person is guilty of criminal possession of stolen property in the
10 second degree when he OR SHE knowingly possesses stolen property, with
11 intent to benefit himself OR HERSELF or a person other than an owner
12 thereof or to impede the recovery by an owner thereof, and when the
13 value of the property exceeds fifty thousand dollars, OR THE PROPERTY
14 CONSISTS OF THE PERSONAL IDENTIFYING INFORMATION OF ONE HUNDRED OR MORE
15 PERSONS.

16 Criminal possession of stolen property in the second degree is a class
17 C felony.

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

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

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

27 Criminal possession of stolen property in the first degree is a class
28 B felony.

29 S 21. Section 190.60 of the penal law, as amended by chapter 491 of
30 the laws of 1992, subdivision 1 as amended by chapter 357 of the laws of
31 1996, is amended to read as follows:

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

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

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

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

45 S 22. The penal law is amended by adding three new sections 190.62,
46 190.63 and 190.64 to read as follows:

47 S 190.62 SCHEME TO DEFRAUD IN THE FOURTH DEGREE.

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

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

51 2. THE VALUE OF THE PROPERTY OR SERVICE OBTAINED EXCEEDS ONE THOUSAND
52 DOLLARS; OR

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

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

1 S 190.63 SCHEME TO DEFRAUD IN THE THIRD DEGREE.

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

4 1. INTENDS TO OBTAIN PROPERTY OR SERVICE FROM TWENTY-FIVE OR MORE
5 PERSONS; OR

6 2. THE VALUE OF THE PROPERTY OR SERVICE OBTAINED EXCEEDS THREE THOU-
7 SAND DOLLARS.

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

9 S 190.64 SCHEME TO DEFRAUD IN THE SECOND DEGREE.

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

12 1. INTENDS TO OBTAIN PROPERTY OR SERVICE FROM ONE HUNDRED OR MORE
13 PERSONS; OR

14 2. THE VALUE OF THE PROPERTY OR SERVICE OBTAINED EXCEEDS FIFTY THOU-
15 SAND DOLLARS.

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

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

19 S 190.65 Scheme to defraud in the first degree.

20 [1. A person is guilty of a scheme to defraud in the first degree when
21 he or she[: (a)] engages in CONDUCT CONSTITUTING a scheme [constituting
22 a systematic ongoing course of conduct with intent] to defraud [ten] IN
23 THE FIFTH DEGREE AND INTENDS TO OBTAIN PROPERTY OR SERVICE FROM ONE
24 THOUSAND or more persons or to obtain property from ten or more persons
25 by false or fraudulent pretenses, representations or promises, and so
26 obtains property from one or more of such persons; [or (b) engages in a
27 scheme constituting a systematic ongoing course of conduct with intent
28 to defraud more than one person or to obtain property from more than one
29 person by false or fraudulent pretenses, representations or promises,
30 and so obtains] AND VALUE OF THE property [with a value in excess of one
31 thousand dollars from one or more such persons; or (c) engages in a
32 scheme constituting a systematic ongoing course of conduct with intent
33 to defraud more than one person, more than one of whom is a vulnerable
34 elderly person as defined in subdivision three of section 260.30 of this
35 chapter or to obtain property from more than one person, more than one
36 of whom is a vulnerable elderly person as defined in subdivision three
37 of section 260.30 of this chapter, by false or fraudulent pretenses,
38 representations or promises, and so obtains property from one or more
39 such persons.

40 2. In any prosecution under this section, it shall be necessary to
41 prove the identity of at least one person from whom the defendant so
42 obtained property, but it shall not be necessary to prove the identity
43 of any other intended victim, provided that in any prosecution under
44 paragraph (c) of subdivision one of this section, it shall be necessary
45 to prove the identity of at least one such vulnerable elderly person as
46 defined in subdivision three of section 260.30 of this chapter] OR
47 SERVICE OBTAINED EXCEEDS ONE MILLION DOLLARS.

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

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

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

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

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

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

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

6 S 25. Section 190.79 of the penal law, as added by chapter 619 of the
7 laws of 2002, subdivision 4 as amended by chapter 279 of the laws of
8 2008, is amended to read as follows:

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

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

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

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

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

22 4. commits the crime of identity theft in the [third] FIFTH degree as
23 defined in section 190.78 of this article and has been previously
24 convicted within the last [five years of identity theft in the third
25 degree as defined in section 190.78, identity theft in the second degree
26 as defined in this section, identity theft in the first degree as
27 defined in section 190.80, unlawful possession of personal identifica-
28 tion information in the third degree as defined in section 190.81,
29 unlawful possession of personal identification information in the second
30 degree as defined in section 190.82, unlawful possession of personal
31 identification information in the first degree as defined in section
32 190.83, unlawful possession of a skimmer device in the second degree as
33 defined in section 190.85, unlawful possession of a skimmer device in
34 the first degree as defined in section 190.86, grand larceny in the
35 fourth degree as defined in section 155.30, grand larceny in the third
36 degree as defined in section 155.35, grand larceny in the second degree
37 as defined in section 155.40 or grand larceny in the first degree as
38 defined in section 155.42 of this chapter] TEN YEARS, EXCLUDING ANY TIME
39 PERIOD DURING WHICH SUCH PERSON WAS INCARCERATED FOR ANY REASON, OF ANY
40 CRIME IN THIS ARTICLE OR ARTICLE ONE HUNDRED SEVENTY OF THIS CHAPTER, OR
41 OF ANY LARCENY CRIME AS DEFINED IN ARTICLE ONE HUNDRED FIFTY-FIVE OF
42 THIS CHAPTER, OR OF ANY CRIMINAL POSSESSION OF STOLEN PROPERTY CRIME AS
43 DEFINED IN ARTICLE ONE HUNDRED SIXTY-FIVE OF THIS CHAPTER; OR HE OR SHE
44 KNOWINGLY AND WITH INTENT TO DEFRAUD ASSUMES THE IDENTITY OF THREE OR
45 MORE PERSONS BY PRESENTING HIMSELF OR HERSELF AS THOSE PERSONS OR BY
46 ACTING AS THOSE PERSONS OR BY USING PERSONAL IDENTIFYING INFORMATION OF
47 ANY OF THOSE PERSONS AND THEREBY OBTAINS GOODS, MONEY, PROPERTY OR
48 SERVICES OR USES CREDIT IN THE NAME OF AT LEAST ONE SUCH PERSON, OR
49 CAUSES FINANCIAL LOSS TO AT LEAST ONE SUCH PERSON OR TO ANOTHER PERSON
50 OR PERSONS.

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

52 S 26. Section 190.80 of the penal law, as added by chapter 619 of the
53 laws of 2002, subdivision 4 as amended by chapter 279 of the laws of
54 2008, is amended to read as follows:

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

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

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

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

11 3. commits or attempts to commit a class D felony or higher level
12 crime or acts as an accessory in the commission of a class D or higher
13 level felony; or

14 4. commits the crime of identity theft in the [second] FOURTH degree
15 as defined in section 190.79 of this article and has been previously
16 convicted within the last [five years of identity theft in the third
17 degree as defined in section 190.78, identity theft in the second degree
18 as defined in section 190.79, identity theft in the first degree as
19 defined in this section, unlawful possession of personal identification
20 information in the third degree as defined in section 190.81, unlawful
21 possession of personal identification information in the second degree
22 as defined in section 190.82, unlawful possession of personal identifi-
23 cation information in the first degree as defined in section 190.83,
24 unlawful possession of a skimmer device in the second degree as defined
25 in section 190.85, unlawful possession of a skimmer device in the first
26 degree as defined in section 190.86, grand larceny in the fourth degree
27 as defined in section 155.30, grand larceny in the third degree as
28 defined in section 155.35, grand larceny in the second degree as defined
29 in section 155.40 or grand larceny in the first degree as defined in
30 section 155.42 of this chapter] TEN YEARS, EXCLUDING ANY TIME PERIOD
31 DURING WHICH SUCH PERSON WAS INCARCERATED FOR ANY REASON, OF ANY CRIME
32 IN THIS ARTICLE OR ARTICLE ONE HUNDRED SEVENTY OF THIS CHAPTER, OR OF
33 ANY LARCENY CRIME AS DEFINED IN ARTICLE ONE HUNDRED FIFTY-FIVE OF THIS
34 CHAPTER, OR OF ANY CRIMINAL POSSESSION OF STOLEN PROPERTY CRIME AS
35 DEFINED IN ARTICLE ONE HUNDRED SIXTY-FIVE OF THIS CHAPTER; OR ASSUMES
36 THE IDENTITY OF TEN OR MORE PERSONS BY PRESENTING HIMSELF OR HERSELF AS
37 THOSE OTHER PERSONS, OR BY ACTING AS THOSE OTHER PERSONS, OR BY USING
38 PERSONAL IDENTIFYING INFORMATION OF THOSE OTHER PERSONS, AND THEREBY
39 OBTAINING GOODS, MONEY, PROPERTY OR SERVICES OR USES CREDIT IN THE NAME
40 OF AT LEAST ONE SUCH PERSON, OR CAUSES FINANCIAL LOSS TO AT LEAST ONE
41 SUCH PERSON, TO ANOTHER PERSON OR PERSONS.

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

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

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

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

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

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

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

1 C. COMMITS OR ATTEMPTS TO COMMIT A CLASS C FELONY OR HIGHER LEVEL
2 CRIME OR ACTS AS AN ACCESSORY IN THE COMMISSION OF A CLASS C OR HIGHER
3 LEVEL FELONY; OR

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

12 2. ASSUMES THE IDENTITY OF TWENTY-FIVE OR MORE PERSON BY PRESENTING
13 HIMSELF OR HERSELF AS THOSE OTHER PERSONS, OR BY ACTING AS THOSE OTHER
14 PERSONS, OR BY USING PERSONAL IDENTIFYING INFORMATION OF THOSE OTHER
15 PERSONS, AND THEREBY OBTAINS GOODS, MONEY, PROPERTY OR OR SERVICES OR
16 USES CREDIT IN THE NAME OF AT LEAST ONE SUCH PERSON, OR CAUSES FINANCIAL
17 LOSS TO AT LEAST ONE SUCH PERSON, OR TO ANOTHER PERSON OR PERSONS.

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

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

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

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

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

28 B. CAUSES FINANCIAL LOSS TO SUCH PERSON OR TO ANOTHER PERSON OR
29 PERSONS IN AN AGGREGATE AMOUNT THAT EXCEEDS FIVE HUNDRED THOUSAND
30 DOLLARS; OR

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

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

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

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

49 S 190.80-c Aggravated identity theft.

50 A person is guilty of aggravated identity theft when he or she know-
51 ingly and with intent to defraud assumes the identity of another person
52 by presenting himself or herself as that other person, or by acting as
53 that other person or by using personal identifying information of that
54 other person, and knows that such person is a member of the armed forc-
55 es, and knows that such member is presently deployed outside of the
56 continental United States OR KNOWS THAT SUCH PERSON IS A VULNERABLE

1 ELDERLY PERSON OR A PHYSICALLY DISABLED PERSON AS SUCH TERMS ARE DEFINED
2 IN SECTION 260.31 OF THIS CHAPTER AND:

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

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

8 Aggravated identity theft is a class D felony.

9 S 28. Sections 190.85 and 190.86 of the penal law, as added by chapter
10 279 of the laws of 2008, are amended to read as follows:

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

13 1. A person is guilty of [unlawful] CRIMINAL possession of a skimmer
14 device in the second degree when he or she possesses a skimmer device
15 with the intent that such device be used in furtherance of the commis-
16 sion of the crime of identity theft [or unlawful possession of personal
17 identification information] as defined in this article, LARCENY AS
18 DEFINED IN ARTICLE ONE HUNDRED FIFTY-FIVE OF THIS CHAPTER; OR CRIMINAL
19 POSSESSION OF STOLEN PROPERTY AS DEFINED IN ARTICLE ONE HUNDRED
20 SIXTY-FIVE OF THIS CHAPTER.

21 2. For purposes of this article, "skimmer device" means a device
22 designed or adapted to obtain personal identifying information from a
23 credit card, debit card, public benefit card, access card or device, or
24 other card or device that contains personal identifying information.

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

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

29 A person is guilty of [unlawful] CRIMINAL possession of a skimmer
30 device in the first degree when he or she commits the crime of [unlaw-
31 ful] CRIMINAL possession of a skimmer device in the second degree and he
32 or she has been previously convicted within the last [five years of
33 identity theft in the third degree as defined in section 190.78, identi-
34 ty theft in the second degree as defined in section 190.79, identity
35 theft in the first degree as defined in section 190.80, unlawful
36 possession of personal identification information in the third degree as
37 defined in section 190.81, unlawful possession of personal identifica-
38 tion information in the second degree as defined in section 190.82,
39 unlawful possession of personal identification information in the first
40 degree as defined in section 190.83, unlawful possession of a skimmer
41 device in the second degree as defined in section 190.85, unlawful
42 possession of a skimmer device in the first degree as defined in this
43 section, grand larceny in the fourth degree as defined in section
44 155.30, grand larceny in the third degree as defined in section 155.35,
45 grand larceny in the second degree as defined in section 155.40 or grand
46 larceny in the first degree as defined in section 155.42 of this chap-
47 ter] TEN YEARS, EXCLUDING ANY TIME DURING WHICH SUCH PERSON WAS INCAR-
48 CERATED FOR ANY REASON, FOR ANY CRIME IN THIS ARTICLE OR ARTICLE ONE
49 HUNDRED SEVENTY OF THIS CHAPTER, OR OF ANY LARCENY CRIME AS DEFINED IN
50 ARTICLE ONE HUNDRED FIFTY-FIVE OF THIS CHAPTER, OR OF ANY CRIMINAL
51 POSSESSION OF STOLEN PROPERTY CRIME AS DEFINED IN ARTICLE ONE HUNDRED
52 SIXTY-FIVE OF THIS CHAPTER.

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

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

4 (1) An offense of identity theft, LARCENY, CRIMINAL POSSESSION OF
5 STOLEN PROPERTY, or unlawful possession of personal identifying informa-
6 tion, IN WHICH THE PROPERTY STOLEN OR CRIMINALLY POSSESSED IS PERSONAL
7 IDENTIFYING INFORMATION OR COMPUTER DATA OR COMPUTER PROGRAM, and all
8 criminal acts committed as part of the same criminal transaction as
9 defined in subdivision two of section 40.10 of this chapter may be pros-
10 ecuted (i) in any county in which part of the offense took place regard-
11 less of whether the defendant was actually present in such county, or
12 (ii) in the county in which the person who suffers financial loss
13 resided at the time of the commission of the offense, or (iii) in the
14 county where the person whose personal identifying information was used
15 in the commission of the offense resided at the time of the commission
16 of the offense. The law enforcement agency of any such county shall take
17 a police report of the matter and provide the complainant with a copy of
18 such report at no charge.

19 S 30. Subdivision 2 of section 690.05 of the criminal procedure law,
20 as amended by chapter 504 of the laws of 1991, the opening paragraph as
21 amended by chapter 424 of the laws of 1998, is amended to read as
22 follows:

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

26 (a) a search of designated premises, or of a designated vehicle, or of
27 a designated person, OR OF AN ELECTRONIC COMMUNICATION SERVICE OR REMOTE
28 COMPUTING SERVICE, for the purpose of seizing designated property or
29 kinds of property, and to deliver any property so obtained to the court
30 which issued the warrant; or

31 (b) a search of a designated premises for the purpose of searching for
32 and arresting a person who is the subject of: (i) a warrant of arrest
33 issued pursuant to this chapter, a superior court warrant of arrest
34 issued pursuant to this chapter, or a bench warrant for a felony issued
35 pursuant to this chapter, where the designated premises is the dwelling
36 of a third party who is not the subject of the arrest warrant; or

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

41 AS USED IN THIS SECTION, THE TERM "ELECTRONIC COMMUNICATIONS SERVICE"
42 MEANS ANY SERVICE WHICH PROVIDES TO USERS THEREOF THE ABILITY TO SEND OR
43 RECEIVE WIRE OR ELECTRONIC COMMUNICATIONS. "REMOTE COMPUTING SERVICE"
44 MEANS ANY SERVICE WHICH PROVIDES TO USERS THEREOF COMPUTER STORAGE OR
45 PROCESSING SERVICES BY MEANS OF AN ELECTRONIC COMMUNICATIONS SYSTEM. THE
46 TERMS "ELECTRONIC COMMUNICATION SERVICE" AND "REMOTE COMPUTING SERVICE"
47 SHALL BE CONSTRUED IN ACCORDANCE WITH THE ELECTRONIC COMMUNICATIONS
48 PRIVACY ACT IN CHAPTER 121 (COMMENCING WITH SECTION 2701) OF PART I OF
49 TITLE 18 OF THE UNTIED STATE CODE ANNOTATED. THIS SECTION SHALL NOT
50 APPLY TO CORPORATIONS THAT DO NOT PROVIDE THOSE SERVICES TO THE GENERAL
51 PUBLIC.

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

54 1. A search warrant must direct a search of one or more of the
55 following:

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

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

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

4 (D) A DESIGNATED OR DESCRIBED ELECTRONIC COMMUNICATION SERVICE OR
5 REMOTE COMPUTING SERVICE.

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

8 3. THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION TO THE CONTRARY
9 NOTWITHSTANDING, A SEARCH WARRANT DIRECTING THE SEARCH OF A DESIGNATED
10 OR DESCRIBED ELECTRONIC COMMUNICATION SERVICE OR REMOTE COMPUTING
11 SERVICE, MAY BE EXECUTED ON ANY COMPANY, CORPORATION OR ENTITY WHICH IS
12 HEADQUARTERED OR LOCATED OUTSIDE OF THE STATE OF NEW YORK, AND WHICH
13 CONDUCTS ITS REGULAR BUSINESS IN NEW YORK OR THAT OFFERS ITS SERVICES TO
14 RESIDENTS OF NEW YORK. SERVICE ON ANY SUCH ELECTRONIC COMMUNICATION
15 SERVICE OR REMOTE COMPUTING SERVICE ENTITY MAY BE MADE BY PERSONAL
16 DELIVERY WITHIN THE STATE, BY REGISTERED OR CERTIFIED MAIL. SERVICE MAY
17 ALSO BE MADE BY FACSIMILE OR OTHER ELECTRONIC MEANS IF THE SERVICE IS
18 ACCOMPANIED WITH A CERTIFICATION FROM THE SENDER THAT SUCH SENDER IS A
19 POLICE OFFICER, DISTRICT ATTORNEY OR OTHER PUBLIC SERVANT SPECIFIED IN
20 SUBDIVISION ONE OF SECTION 690.05 OF THIS ARTICLE. IF AN ENTITY SHALL
21 REFUSE SUCH SERVICE, THEN SUCH POLICE OFFICER, DISTRICT ATTORNEY OR
22 OTHER PUBLIC SERVANT LOCATED WITHIN THE JURISDICTION IN WHICH THE ELEC-
23 TRONIC COMMUNICATION SERVICE OR REMOTE COMPUTING SERVICE ENTITY IS
24 LOCATED MAY SERVE THE WARRANT UPON SUCH ENTITY. A SEARCH WARRANT ISSUED
25 PURSUANT TO THIS SUBDIVISION SHALL BE LIMITED IN SCOPE TO THE DESIGNATED
26 OR DESCRIBED ELECTRONIC RECORDS OR DATA, EITHER IN PAPER OR ELECTRONIC
27 FORM, THAT ARE MADE, KEPT, OR MAINTAINED BY THE ELECTRONIC COMMUNICATION
28 SERVICE OR REMOTE COMPUTING SERVICE, AND SHALL NOT INCLUDE ANY OTHER
29 PHYSICAL OR TANGIBLE ITEMS. ANY ELECTRONIC RECORDS OR DATA RESPONSIVE TO
30 A SEARCH WARRANT ISSUED PURSUANT TO THIS SUBDIVISION SHALL BE ADMITTED
31 INTO EVIDENCE BEFORE THE GRAND JURY OR AT TRIAL IN ACCORD WITH THE RULES
32 AND LAWS OF NEW YORK STATE.

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

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

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

43 S 496.06 Public corruption.

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

50 2. A "specified offense" is an offense defined by any of the following
51 provisions of this chapter: section 155.25 (petit larceny); section
52 155.30 (grand larceny in the fourth degree); section 155.35 (grand
53 larceny in the third degree); section 155.40 (grand larceny in the
54 second degree); section 155.42 (grand larceny in the first degree);
55 section 190.60 (scheme to defraud in the [second] FIFTH degree); SECTION
56 190.62 (SCHEME TO DEFRAUD IN THE FOURTH DEGREE); SECTION 190.63 (SCHEME

1 TO DEFRAUD IN THE THIRD DEGREE); SECTION 190.64 (SCHEME TO DEFRAUD IN
2 THE SECOND DEGREE); or section 190.65 (scheme to defraud in the first
3 degree).

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

7 S 190.77 Offenses involving theft of identity; definitions.

8 1. For the purposes of sections 190.78, 190.79, 190.80 [and],
9 190.80-a, 190.80-B, 190.80-C and 190.85 of this article "personal iden-
10 tifying information" means a person's name, address, telephone number,
11 date of birth, driver's license number, social security number, place of
12 employment, mother's maiden name, financial services account number or
13 code, savings account number or code, checking account number or code,
14 brokerage account number or code, credit card account number or code,
15 debit card number or code, automated teller machine number or code,
16 taxpayer identification number, computer system password, signature or
17 copy of a signature, electronic signature, unique biometric data that is
18 a fingerprint, voice print, retinal image or iris image of another
19 person, telephone calling card number, mobile identification number or
20 code, electronic serial number or personal identification number, or any
21 other name, number, code or information that may be used alone or in
22 conjunction with other such information to assume the identity of another
23 person.

24 2. For the purposes of sections 190.78, 190.79, 190.80, 190.80-a,
25 190.80-B, 190.80-C, 190.81, 190.82 and 190.83 of this article:

26 a. "electronic signature" shall have the same meaning as defined in
27 subdivision three of section three hundred two of the state technology
28 law.

29 b. "personal identification number" means any number or code which may
30 be used alone or in conjunction with any other information to assume the
31 identity of another person or access financial resources or credit of
32 another person.

33 c. "member of the armed forces" shall mean a person in the military
34 service of the United States or the military service of the state,
35 including but not limited to, the armed forces of the United States, the
36 army national guard, the air national guard, the New York naval militia,
37 the New York guard, and such additional forces as may be created by the
38 federal or state government as authorized by law.

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

42 2. he or she has been previously convicted within the last five years
43 of identity theft in the third degree as defined in section [190.78]
44 190.80, identity theft in the second degree as defined in section
45 [190.79] 190.80-A, identity theft in the first degree as defined in
46 section [190.80] 190.80-B, unlawful possession of personal identifica-
47 tion information in the third degree as defined in section 190.81,
48 unlawful possession of personal identification information in the second
49 degree as defined in section 190.82, unlawful possession of personal
50 identification information in the first degree as defined in this
51 section, [unlawful] CRIMINAL possession of a skimmer device in the
52 second degree as defined in section 190.85, [unlawful] CRIMINAL
53 possession of a skimmer device in the first degree as defined in section
54 190.86, grand larceny in the fourth degree as defined in section 155.30,
55 grand larceny in the third degree as defined in section 155.35, grand
56 larceny in the second degree as defined in section 155.40 or grand

1 larceny in the first degree as defined in section 155.42 of this chap-
2 ter; or

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

6 (s) Identity theft in the second degree, as defined in section
7 [190.79] 190.80-A of the penal law, identity theft in the first degree,
8 as defined in section [190.80] 190.80-B of the penal law, unlawful
9 possession of personal identification information in the second degree,
10 as defined in section 190.82 of the penal law, and unlawful possession
11 of personal identification information in the first degree, as defined
12 in section 190.83 of the penal law.

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

16 (a) "Specified offense" for purposes of this article means a class A
17 felony offense other than an offense as defined in article two hundred
18 twenty, a violent felony offense as defined in section 70.02,
19 manslaughter in the second degree as defined in section 125.15, criminal
20 tampering in the first degree as defined in section 145.20, identity
21 theft in the second degree as defined in section [190.79] 190.80-A,
22 identity theft in the first degree as defined in section [190.80]
23 190.80-B, unlawful possession of personal identification information in
24 the second degree as defined in section 190.82, unlawful possession of
25 personal identification information in the first degree as defined in
26 section 190.83, money laundering in support of terrorism in the fourth
27 degree as defined in section 470.21, money laundering in support of
28 terrorism in the third degree as defined in section 470.22, money laun-
29 dering in support of terrorism in the second degree as defined in
30 section 470.23, money laundering in support of terrorism in the first
31 degree as defined in section 470.24 of this chapter, and includes an
32 attempt or conspiracy to commit any such offense.

33 S 39. Subdivision 1 of paragraph (b) of subdivision 4 of section 60.27
34 of the penal law, subdivision 1 as amended by chapter 279 of the laws of
35 2008, paragraph (b) of subdivision 4 as amended by chapter 313 of the
36 laws of 2011, are amended to read as follows:

37 1. In addition to any of the dispositions authorized by this article,
38 the court shall consider restitution or reparation to the victim of the
39 crime and may require restitution or reparation as part of the sentence
40 imposed upon a person convicted of an offense, and after providing the
41 district attorney with an opportunity to be heard in accordance with the
42 provisions of this subdivision, require the defendant to make restitu-
43 tion of the fruits of his or her offense or reparation for the actual
44 out-of-pocket loss caused thereby and, in the case of a violation of
45 section 190.78, 190.79, 190.80, 190.80-A, 190.80-B, 190.82 or 190.83 of
46 this chapter, any costs or losses incurred due to any adverse action
47 taken against the victim. The district attorney shall where appropriate,
48 advise the court at or before the time of sentencing that the victim
49 seeks restitution or reparation, the extent of injury or economic loss
50 or damage of the victim, and the amount of restitution or reparation
51 sought by the victim in accordance with his or her responsibilities
52 under subdivision two of section 390.50 of the criminal procedure law
53 and article twenty-three of the executive law. The court shall hear and
54 consider the information presented by the district attorney in this
55 regard. In that event, or when the victim impact statement reports that
56 the victim seeks restitution or reparation, the court shall require,

1 unless the interests of justice dictate otherwise, in addition to any of
2 the dispositions authorized by this article that the defendant make
3 restitution of the fruits of the offense and reparation for the actual
4 out-of-pocket loss and, in the case of a violation of section 190.78,
5 190.79, 190.80, 190.82 or 190.83 of this chapter, any costs or losses
6 incurred due to any adverse action, caused thereby to the victim. In the
7 event that restitution or reparation are not ordered, the court shall
8 clearly state its reasons on the record. Adverse action as used in this
9 subdivision shall mean and include actual loss incurred by the victim,
10 including an amount equal to the value of the time reasonably spent by
11 the victim attempting to remediate the harm incurred by the victim from
12 the offense, and the consequential financial losses from such action.

13 (b) the term "victim" shall include the victim of the offense, the
14 representative of a crime victim as defined in subdivision six of
15 section six hundred twenty-one of the executive law, an individual whose
16 identity was assumed or whose personal identifying information was used
17 in violation of section 190.78, 190.79 [or], 190.80, 190.80-A OR
18 190.80-B of this chapter, or any person who has suffered a financial
19 loss as a direct result of the acts of a defendant in 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, a good samaritan as defined in section six hundred twen-
22 ty-one of the executive law and the office of victim services or other
23 governmental agency that has received an application for or has provided
24 financial assistance or compensation to the victim. A victim shall also
25 mean any owner or lawful producer of a master recording, or a trade
26 association that represents such owner or lawful producer, that has
27 suffered injury as a result of an offense as defined in article two
28 hundred seventy-five of this chapter.

29 S 40. This act shall take effect immediately.