STATE OF NEW YORK

5496--A

2017-2018 Regular Sessions

IN ASSEMBLY

February 9, 2017

Introduced by M. of A. LENTOL, MONTESANO, BARNWELL -- read once and referred to the Committee on Codes -- 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; and to repeal certain provisions of the penal law relating to scheme to defraud

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivisions 1, 2, 3 and 4 of section 155.00 of the penal law, subdivision 1 as amended by chapter 514 of the laws of 1986, are amended and two new subdivisions 10 and 11 are added to read as follows:

1. "Property" means any money, personal property, real property, computer data, computer program, **personal identifying information, secret scientific material,** thing in action, evidence of debt or contract, or any article, substance or thing of value, including any gas, steam, water or electricity, which is provided for a charge or compensation.

2. "Obtain" includes, but is not limited to, the bringing about of a transfer or purported transfer of property or of a legal interest therein, whether to the obtainer or another. **With regard to personal identifying information, computer data or computer program, obtain includes duplicating, recording, copying, downloading, uploading or printing out the information, data, or program, or obtaining a physical object containing such information. With regard to service, obtain includes, but is not limited to, using or accessing a service.**

3. "Deprive." To "deprive" another of property means (a) to withhold it or cause it to be withheld from him **or her** permanently or for so extended a period or under such circumstances that the major portion of its economic value or benefit is lost to him **or her**, or (b) to dispose of the property in such manner or under such circumstances as to render

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

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it unlikely that an owner will recover such property. When the property is personal identifying information, computer data or computer program, 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.

§ 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.

§ 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.**

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

§ 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.

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

§ 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.

§ 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

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

§ 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.

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

§ 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 **or her** position as a public servant by engaging in conduct

within or related to his **or her** official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely**, or**

3. the property is personal identifying information of one hundred or more persons.

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

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

§ 155.42 Grand larceny in the first degree.

A person is guilty of grand larceny in the first degree when he **or she** steals property **or a service** and when the value of the property **or service** exceeds one million dollars**; or the property is personal identifying information of one thousand or more persons**.

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

§ 10. Subdivisions 5 and 8 of section 156.00 of the penal law, subdivision 5 as amended and subdivision 8 as added by chapter 558 of the laws of 2006, are amended to read as follows:

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

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

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

(c) is not and is not intended to be available to anyone other than the person or persons rightfully in possession thereof or selected persons having access thereto with his, her or their consent and which [~~accords or may accord such rightful possessors an advantage over competitors or other persons who do not have knowledge or the benefit thereof~~] **any person, other than a person rightfully in possession, knows or should know is not intended to be available to him or her**.

8. "Without authorization" means to use or to access a computer, computer service or computer network without the permission of the owner or lessor or someone licensed or privileged by the owner or lessor where such person knew that his or her use or access was without permission or after actual notice to such person that such use or access was without permission**, or that such use or access was for purposes other than those for which permission was granted by the owner, lessor, or someone licensed or privileged by such owner or lessor**. It shall also mean the access of a computer service by a person without permission where such person knew that such access was without permission or after actual notice to such person, that such access was without permission.

Proof that such person used or accessed a computer, computer service or computer network through the knowing use of a set of instructions, code or computer program that bypasses, defrauds or otherwise circumvents a security measure installed or used with the user's authorization

on the computer, computer service or computer network shall be presumptive evidence that such person used or accessed such computer, computer service or computer network without authorization.

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

§ 156.20 Computer tampering in the [~~fourth~~] fifth degree.

A person is guilty of computer tampering in the [~~fourth~~] fifth degree when he or she uses, causes to be used, or accesses a computer, computer service, or computer network without authorization and he or she intentionally alters in any manner or destroys computer data or a computer program of another person.

Computer tampering in the [~~fourth~~] fifth degree is a class A misdemeanor.

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

§ 156.25 Computer tampering in the [~~third~~] fourth degree.

A person is guilty of computer tampering in the third degree when he or she commits the crime of computer tampering in the [~~fourth~~] fifth degree and:

1. he or she does so with an intent to commit or attempt to commit or further the commission of any felony; or

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

3. he or she intentionally alters in any manner or destroys computer material; or

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

Computer tampering in the [~~third~~] fourth degree is a class E felony.

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

§ 156.26 Computer tampering in the [~~second~~] third degree.

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

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

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

Computer tampering in the [~~second~~] third degree is a class D felony.

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

§ 156.27 Computer tampering in the [~~first~~] second degree.

A person is guilty of computer tampering in the [~~first~~] second degree when he or she commits the crime of computer tampering in the fourth degree and he or she intentionally alters in any manner or destroys computer data or a computer program so as to cause damages in an aggregate amount exceeding fifty thousand dollars.

Computer tampering in the [~~first~~] second degree is a class C felony.

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

§ 156.28 Computer tampering in the first degree.

A person is guilty of computer tampering in the first degree when he or she commits the crime of computer tampering in the fifth degree and he or she intentionally alters in any manner or destroys computer data or a computer program and thereby causes damages in an aggregate amount of one million dollars or more.

Computer tampering in the first degree is a class B felony.

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

§ 156.60 Denial of service attack on a computer, computer service, computer program, or computer network in the fifth degree.

A person is guilty of denial of service attack on a computer, computer service, computer program, or computer network in the fifth degree when he or she acting alone or with others knowingly causes the transmission of a program, information, code, or command, or other electronic communication, and as a result of such conduct, intentionally makes the computer, computer service, computer program, or computer network temporarily or indefinitely unavailable to its intended users.

Denial of service attack on a computer, computer service, computer program, or computer network in the fifth degree is a class A misdemeanor.

§ 156.65 Denial of service attack on a computer, computer service, computer program, or computer network in the fourth degree.

A person is guilty of denial of service attack on a computer, computer service, computer program, or computer network in the fourth degree when he or she commits the crime of denial of service attack on a computer, computer service, computer program, or computer network in the fifth degree and thereby causes damages or loss that exceeds one thousand dollars to another person or persons, and/or one or more financial institutions and/or other businesses.

Denial of service attack on a computer, computer service, computer program, or computer network in the fourth degree is a class E felony.

§ 156.70 Denial of service attack on a computer, computer service, computer program, or computer network in the third degree.

A person is guilty of denial of service attack on a computer in the third degree when he or she commits the crime of denial of service attack on a computer, computer service, computer program, or computer network in the fifth degree and thereby causes damages or loss that exceeds three thousand dollars to another person or persons, and/or to one or more financial institutions and/or other businesses, or commits or attempts to commit a class D felony or higher level crime or acts as an accessory to the commission of a class D or higher level felony.

Denial of service attack on a computer, computer service, computer program, or computer network in the third degree is a class D felony.

§ 156.75 Denial of service attack on a computer, computer service, computer program, or computer network in the second degree.

A person is guilty of denial of service attack on a computer, computer service, computer program, or computer network in the second degree when he or she commits the crime of denial of service attack on a computer, computer service, computer program, or computer network in the fifth degree and thereby causes damages or loss that exceeds fifty thousand dollars to another person or persons, and/or financial institutions and/or other businesses, or commits or attempts to commit a class C felony or higher level crime or acts as an accessory in the commission of a class C or higher level felony.

Denial of service attack on a computer, computer service, computer program, or computer network in the second degree is a class C felony.

§ 156.80 Denial of service attack on a computer, computer service, computer program, or computer network in the first degree.

A person is guilty of denial of service attack on a computer, computer service, computer program, or computer network in the first degree when he or she commits the crime of denial of service attack on a computer, computer service, computer program, or computer network in the fifth degree and thereby causes damages or loss that exceeds one million dollars to another person or persons, and/or one or more financial institutions and/or other businesses, or commits or attempts to commit a class B felony or higher level crime or acts as an accessory in the commission on a class B or higher level felony.

Denial of service attack on a computer, computer service, computer program, or computer network in the first degree is a class B felony.

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

2. The property consists of a credit card, debit card or public benefit card**, or personal identifying information as defined in section 190.77 of this chapter**; or

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

§ 165.50 Criminal possession of stolen property in the third degree.

A person is guilty of criminal possession of stolen property in the third degree when he **or she** knowingly possesses stolen property, with intent to benefit himself **or herself** or a person other than an owner thereof or to impede the recovery by an owner thereof, and when the value of the property exceeds three thousand dollars**, or the property consisted of the personal identifying information of twenty-five or more persons**.

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

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

§ 165.52 Criminal possession of stolen property in the second degree.

A person is guilty of criminal possession of stolen property in the second degree when he **or she** knowingly possesses stolen property, with intent to benefit himself **or herself** or a person other than an owner thereof or to impede the recovery by an owner thereof, and when the value of the property exceeds fifty thousand dollars**, or the property consists of the personal identifying information of one hundred or more persons**.

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

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

§ 165.54 Criminal possession of stolen property in the first degree.

A person is guilty of criminal possession of stolen property in the first degree when he **or she** knowingly possesses stolen property, with intent to benefit himself **or herself** or a person other than an owner thereof or to impede the recovery by an owner, and when the value of the property exceeds one million dollars**, or the property consists of the personal identifying information of one thousand or more persons**.

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

§ 21. Sections 190.60 and 190.65 of the penal law are REPEALED and six new sections 190.60, 190.61, 190.62, 190.63, 190.64 and 190.65 are added to read as follows:

§ 190.60 Scheme to defraud defined.

1. A person engages in a scheme to defraud when he or she engages in a scheme constituting a systematic ongoing course of conduct with intent to defraud at least one person or to obtain property or service from at least one person by false or fraudulent pretenses, representations or promises, and so obtains property or service from at least one person.

2. Property, service, computer data and computer program shall have the meanings set forth in section 155.00 of this chapter.

3. In any prosecution of a scheme to defraud, it shall be necessary to prove the identity of at least one person from whom the defendant so obtained property or service, but it shall not be necessary to prove the identity of any other intended victim, provided that in a prosecution of a scheme to defraud pursuant to subdivision three of section 190.62 of this article, it shall be necessary to prove the identity of at least one such vulnerable elderly person.

§ 190.61 Scheme to defraud in the fifth degree.

A person is guilty of a scheme to defraud in the fifth degree when he or she engages in a scheme to defraud.

Scheme to defraud in the fifth degree is a class A misdemeanor.

§ 190.62 Scheme to defraud in the fourth degree.

A person is guilty of a scheme to defraud in the fourth degree when he or she engages in a scheme to defraud, and

1. intends to obtain property or service from ten or more persons; or

2. the value of the property or service obtained exceeds one thousand dollars; or

3. intends to obtain and does obtain property or service from at least one vulnerable elderly person as defined in subdivision three of section 260.31 of this chapter.

Scheme to defraud in the fourth degree is a class E felony.

§ 190.63 Scheme to defraud in the third degree.

A person is guilty of a scheme to defraud in the third degree when he or she engages in a scheme to defraud, and

1. intends to obtain property or service from twenty-five or more persons; or

2. the value of the property or service obtained exceeds three thousand dollars.

Scheme to defraud in the third degree is a class D felony.

§ 190.64 Scheme to defraud in the second degree.

A person is guilty of a scheme to defraud in the second degree when he or she engages in a scheme to defraud, and

1. intends to obtain property or service from one hundred or more persons; or

2. the value of the property or service obtained exceeds fifty thousand dollars.

Scheme to defraud in the second degree is a class C felony.

§ 190.65 Scheme to defraud in the first degree.

A person is guilty of a scheme to defraud in the first degree when he or she engages in a scheme to defraud, and

1. intends to obtain property or service from one thousand or more persons; or

2. the value of the property or service obtained exceeds one million dollars.

Scheme to defraud in the first degree is a class B felony.

§ 22. Section 190.78 of the penal law, as added by chapter 619 of the laws of 2002, is amended to read as follows:

§ 190.78 Identity theft in the [~~third~~] fifth degree.

A person is guilty of identity theft in the [~~third~~] fifth degree when he or she knowingly and with intent to defraud assumes the identity of another person by presenting himself or herself as that other person, or by acting as that other person or by using personal identifying information of that other person, and thereby:

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

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

Identity theft in the [~~third~~] fifth degree is a class A misdemeanor.

§ 23. Section 190.79 of the penal law, as added by chapter 619 of the laws of 2002, subdivision 4 as amended by chapter 279 of the laws of 2008, is amended to read as follows:

§ 190.79 Identity theft in the [~~second~~] fourth degree.

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

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

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

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

4. commits the crime of identity theft in the [~~third~~] fifth degree as defined in section 190.78 of this article and has been previously convicted within the last [~~five years of identity theft in the third degree as defined in section 190.78, identity theft in the second degree as defined in this section, identity theft in the first degree as defined in section 190.80, unlawful possession of personal identification information in the third degree as defined in section 190.81, unlawful possession of personal identification information in the second degree as defined in section 190.82, unlawful possession of personal identification information in the first degree as defined in section 190.83, unlawful possession of a skimmer device in the second degree as defined in section 190.85, unlawful possession of a skimmer device in the first degree as defined in section 190.86, grand larceny in the fourth degree as defined in section 155.30, grand larceny in the third degree as defined in section 155.35, grand larceny in the second degree as defined in section 155.40 or grand larceny in the first degree as defined in section 155.42 of this chapter~~] ten years, excluding any time period during which such person was incarcerated for any reason, of any crime in this article or article one hundred seventy of this chapter, or of any larceny crime as defined in article one hundred fifty-five of this chapter, or of any criminal possession of stolen property crime as defined in article one hundred sixty-five of this chapter; or he or she knowingly and with intent to defraud assumes the identity of three or more persons by presenting himself or herself as those persons or by acting as those persons or by using personal identifying information of any of those persons and thereby obtains goods, money, property or services or uses credit in the name of at least one such person, or

causes financial loss to at least one such person or to another person or persons.

Identity theft in the [~~second~~] fourth degree is a class E felony.

§ 24. Section 190.80 of the penal law, as added by chapter 619 of the laws of 2002, subdivision 4 as amended by chapter 279 of the laws of 2008, is amended to read as follows:

§ 190.80 Identity theft in the [~~first~~] third degree.

A person is guilty of identity theft in the [~~first~~] third degree when he or she knowingly and with intent to defraud assumes the identity of another person by presenting himself or herself as that other person, or by acting as that other person or by using personal identifying information of that other person, and thereby:

1. obtains goods, money, property or services or uses credit in the name of such other person in an aggregate amount that exceeds two thousand dollars; or

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

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

4. commits the crime of identity theft in the [~~second~~] fourth degree as defined in section 190.79 of this article and has been previously convicted within the last [~~five years of identity theft in the third degree as defined in section 190.78, identity theft in the second degree as defined in section 190.79, identity theft in the first degree as defined in this section, unlawful possession of personal identification information in the third degree as defined in section 190.81, unlawful possession of personal identification information in the second degree as defined in section 190.82, unlawful possession of personal identification information in the first degree as defined in section 190.83, unlawful possession of a skimmer device in the second degree as defined in section 190.85, unlawful possession of a skimmer device in the first degree as defined in section 190.86, grand larceny in the fourth degree as defined in section 155.30, grand larceny in the third degree as defined in section 155.35, grand larceny in the second degree as defined in section 155.40 or grand larceny in the first degree as defined in section 155.42 of this chapter~~] ten years, excluding any time period during which such person was incarcerated for any reason, of any crime in this article or article one hundred seventy of this chapter, or of any larceny crime as defined in article one hundred fifty-five of this chapter, or of any criminal possession of stolen property crime as defined in article one hundred sixty-five of this chapter; or assumes the identity of ten or more persons by presenting himself or herself as those other persons, or by acting as those other persons, or by using personal identifying information of those other persons, and thereby obtaining goods, money, property or services or uses credit in the name of at least one such person, or causes financial loss to at least one such person, to another person or persons.

Identity theft in the [~~first~~] third degree is a class D felony.

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

§ 190.80-a Identity theft in the second degree.

A person is guilty of identity theft in the second degree when:

1. he or she knowingly and with intent to defraud assumes the identity of another person by presenting himself or herself as that other person,

or by acting as that other person or by using personal identifying information of that other person, and thereby:

a. obtains goods, money, property or services or uses credit in the name of such other person in an aggregate amount that exceeds twenty-five thousand dollars; or

b. causes financial loss to such person to another person or persons in an aggregate amount that exceeds twenty-five thousand dollars; or

c. commits or attempts to commit a class C felony or higher level crime or acts as an accessory in the commission of a class C or higher level felony; or

d. commits the crime of identity theft in the third degree as defined in section 190.80 of this article and has been previously convicted within the last ten years, excluding any time during which such person was incarcerated for any reason, of any crime in this article or article one hundred seventy of this chapter, or any larceny crime as defined in article one hundred fifty-five of this chapter, or of any criminal possession of stolen property crime as defined in article one hundred sixty-five of this chapter; or

2. assumes the identity of twenty-five or more person by presenting himself or herself as those other persons, or by acting as those other persons, or by using personal identifying information of those other persons, and thereby obtains goods, money, property or or services or uses credit in the name of at least one such person, or causes financial loss to at least one such person, or to another person or persons.

Identity theft in the second degree of a class C felony.

§ 190.80-b Identity theft in the first degree.

A person is guilty of identity theft in the first degree when:

1. he or she knowingly and with intent to defraud assumes the identity of another person by presenting himself or herself as that other person, or by acting as that other person or by using personal identifying information, and thereby:

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

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

c. commits or attempts to commit a class B felony or higher level crime or act as an accessory in the commission of a class B or higher level felony; or

d. commits the crime of identity theft in the second degree as defined in section 190.80-a of this article and has been previously convicted within the last ten years, excluding any time during which such person was incarcerated for any reason, of any crime in this article or article one hundred seventy of this chapter, or of any larceny crime as defined in article one hundred fifty-five of this chapter, or of any criminal possession of stolen property crime as defined in article one hundred sixty-five of this chapter; or

2. assumes the identity of one hundred or more persons by presenting himself or herself as those other persons, or by acting as those other persons, or by using personal identifying information of those other persons, and thereby obtains goods, money, property or services or uses credit in the name of a least on such person, or causes financial loss to at least on such person, or to another person or persons.

Identity theft in the first degree is a class B felony.

§ 190.80-c Aggravated identity theft.

A person is guilty of aggravated identity theft when he or she knowingly and with intent to defraud assumes the identity of another person by presenting himself or herself as that other person, or by acting as that other person or by using personal identifying information of that other person, and knows that such person is a member of the armed forces, and knows that such member is presently deployed outside of the continental United States **or knows that such person is a vulnerable elderly person or a physically disabled person as such terms are defined in section 260.31 of this chapter and:**

1. thereby obtains goods, money, property or services or uses credit in the name of such [~~member of the armed forces~~] **individual** in an aggregate amount that exceeds five hundred dollars; or

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

Aggravated identity theft is a class D felony.

§ 26. Sections 190.85 and 190.86 of the penal law, as added by chapter 279 of the laws of 2008, are amended to read as follows:

§ 190.85 [~~Unlawful~~] **Criminal** possession of a skimmer device in the second degree.

1. A person is guilty of [~~unlawful~~] **criminal** possession of a skimmer device in the second degree when he or she possesses a skimmer device with the intent that such device be used in furtherance of the commission of the crime of identity theft [~~or unlawful possession of personal identification information~~] as defined in this article**, larceny as defined in article one hundred fifty-five of this chapter; or criminal possession of stolen property as defined in article one hundred sixty-five of this chapter**.

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

[~~Unlawful~~] **Criminal** possession of a skimmer device in the second degree is a class [~~A misdemeanor~~] **D felony**.

§ 190.86 [~~Unlawful~~] **Criminal** possession of a skimmer device in the first degree.

A person is guilty of [~~unlawful~~] **criminal** possession of a skimmer device in the first degree when he or she commits the crime of [~~unlawful~~] **criminal** possession of a skimmer device in the second degree and he or she has been previously convicted within the last [~~five years of identity theft in the third degree as defined in section 190.78, identity theft in the second degree as defined in section 190.79, identity theft in the first degree as defined in section 190.80, unlawful possession of personal identification information in the third degree as defined in section 190.81, unlawful possession of personal identification information in the second degree as defined in section 190.82, unlawful possession of personal identification information in the first degree as defined in section 190.83, unlawful possession of a skimmer device in the second degree as defined in section 190.85, unlawful possession of a skimmer device in the first degree as defined in this section, grand larceny in the fourth degree as defined in section 155.30, grand larceny in the third degree as defined in section 155.35, grand larceny in the second degree as defined in section 155.40 or grand larceny in the first degree as defined in section 155.42 of this chapter~~] **ten years, excluding any time during which such person was incarcerated for any reason, for any crime in this article or article one hundred seventy of this chapter, or of any larceny crime as defined in**

article one hundred fifty-five of this chapter, or of any criminal possession of stolen property crime as defined in article one hundred sixty-five of this chapter.

[~~Unlawful~~] Criminal possession of a skimmer device in the first degree is a class [~~E~~] C felony.

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

(l) An offense of identity theft, larceny, criminal possession of stolen property, or unlawful possession of personal identifying information, in which the property stolen or criminally possessed is personal identifying information or computer data or computer program, and all criminal acts committed as part of the same criminal transaction as defined in subdivision two of section 40.10 of this chapter may be prosecuted (i) in any county in which part of the offense took place regardless of whether the defendant was actually present in such county, or (ii) in the county in which the person who suffers financial loss resided at the time of the commission of the offense, or (iii) in the county where the person whose personal identifying information was used in the commission of the offense resided at the time of the commission of the offense. The law enforcement agency of any such county shall take a police report of the matter and provide the complainant with a copy of such report at no charge.

§ 28. Subdivision 2 of section 690.05 of the criminal procedure law, as amended by chapter 504 of the laws of 1991, the opening paragraph as amended by chapter 424 of the laws of 1998, is amended to read as follows:

2. A search warrant is a court order and process directing a police officer, district attorney or other public servant of the kind described in subdivision one of this section, to conduct:

(a) a search of designated premises, or of a designated vehicle, or of a designated person, or of electronic records and data that have been directed under this article to be produced from an electronic communication service or remote computing service, for the purpose of seizing designated property or kinds of property, and to deliver any property so obtained to the court which issued the warrant; or

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

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

§ 29. Section 690.05 of the criminal procedure law is amended by adding two new subdivisions 3 and 4 to read as follows:

3. A court authorized to issue search warrants under this article shall be deemed a "court of competent jurisdiction" under 18 U.S.C. section 2711(3) of the Electronic Communications Privacy Act in Chapter 121 (commencing with Section 2701) of Part I of Title 18 of the United States Code Annotated and shall be authorized to issue orders as provided by federal law.

4. As used in this article, the term "electronic communications service" means any service which provides to users thereof the ability

to send or receive wire or electronic communications. "Remote computing service" means any service which provides to users thereof computer storage or processing services by means of an electronic communications system. The terms "electronic communication service" and "remote computing service" shall be construed in accordance with the Electronic Communications Privacy Act in Chapter 121 (commencing with Section 2701) of Part I of Title 18 of the United State Code Annotated. This section shall not apply to corporations that do not provide those services to the general public.

§ 30. Subdivision 1 of section 690.15 of the criminal procedure law is amended to read as follows:

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

(a) A designated or described place or premises;

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

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

(d) A designated or described electronic communication service or remote computing service.

§ 31. Section 690.20 of the criminal procedure law is amended to read as follows:

§ 690.20 Search warrants; where executable.

1. A search warrant issued by a district court, the New York City criminal court or a superior court judge sitting as a local criminal court may be executed pursuant to its terms anywhere in the state.

(a) Notwithstanding any provision of this subdivision, a search warrant directing the production of electronic records and data from a designated or described electronic communication service or remote computing service, may be executed on:

(i) any company, corporation or entity which is headquartered or operates within the state of New York; or

(ii) any company, corporation or entity which is headquartered or operates outside of the state of New York, and which conducts regular business in New York; or

(iii) any company which offers services to residents of New York, or does business in New York under a contract or terms of service agreement with a resident of this state, if any part of that contract or agreement is to be performed in New York.

(b) Service on any electronic communication service or remote computing service pursuant to paragraph (a) of this subdivision, may be made by personal delivery within the state, by registered or certified mail. Service may also be made by facsimile or other electronic means if the service is accompanied with a certification from the sender that sender is a police officer, district attorney or other public servant of the kind specified in subdivision one of section 690.05 of this article.

(c) Personal service or substituted service to any electronic communication service or remote computing service may also be made by a police officer, district attorney or other public servant of the kind described in subdivision one of section 690.05 of this article, to any officer, director, managing or general agent, or any other employee of such company or entity actually present in New York state or at any office or place of doing business used by such entity located within New York state.

(d) A search warrant that is issued pursuant to subparagraph (ii) of paragraph (a) of this subdivision shall be limited in scope to the designated or described electronic records or data, either in paper or

electronic form, that are made, kept, or maintained by the electronic communication service or remote computing service, and shall not include the seizure of any other physical or tangible items.

(e) Any electronic records or data responsive to a search warrant issued pursuant to this subdivision shall be admitted into evidence before the grand jury or at trial in accord with the rules and laws of New York state.

2. A search warrant issued by a city court, a town court or a village court may be executed pursuant to its terms only in the county of issuance or an adjoining county.

3. The provisions of subdivision one of this section to the contrary notwithstanding, a search warrant directing the search of a designated or described electronic communication service or remote computing service, may be executed on any company, corporation or entity which is headquartered or located outside of the state of New York, and which conducts its regular business in New York or that offers its services to residents of New York. Service on any such electronic communication service or remote computing service entity may be made by personal delivery within the state, by registered or certified mail. Service may also be made by facsimile or other electronic means if the service is accompanied with a certification from the sender that such sender is a police officer, district attorney or other public servant specified in subdivision one of section 690.05 of this article. If an entity shall refuse such service, then such police officer, district attorney or other public servant located within the jurisdiction in which the electronic communication service or remote computing service entity is located may serve the warrant upon such entity. A search warrant issued pursuant to this subdivision shall be limited in scope to the designated or described electronic records or data, either in paper or electronic form, that are made, kept, or maintained by the electronic communication service or remote computing service, and shall not include any other physical or tangible items. Any electronic records or data responsive to a search warrant issued pursuant to this subdivision shall be admitted into evidence before the grand jury or at trial in accord with the rules and laws of New York state.

§ 32. Section 690.30 of the criminal procedure law is amended by adding three new subdivisions 3, 4 and 5 to read as follows:

3. Notwithstanding any provision of subdivision one of this section, a search warrant that is issued pursuant to paragraph (a) of subdivision one of section 690.20 of this article is deemed executed for purposes of this article at the time that service is made upon the electronic communication service or remote computing service entity pursuant to paragraph (b) or (c) of subdivision one of section 690.20 of this article.

4. A company or entity which has received a search warrant issued pursuant to subdivision one of section 690.20 of this article, shall produce as required by the search warrant any and all records in their possession which are responsive to such warrant, regardless where any such records may be physically stored, maintained or kept, if such records are in fact accessible electronically from such company or entity. Any records stored, maintained or kept by an electronic communication service or remote computing service may be presumed to be within the dominion and control and possession by such companies or entities regardless of where such records are physically located.

5. The provision of records by a company or entity in response to a search warrant that is issued pursuant to subdivision one of section 690.20 of this article shall produce all records responsive to such

warrant to the police officer, district attorney or other public servant who served the entity with such warrant, within a period not to exceed thirty days.

(a) An electronic communication service or remote computing service responding to a warrant under this section may request an extension of the period for compliance with a warrant if extenuating circumstances reasonably exist to justify such extension. Any request for extension shall be made to the court which issued the warrant and on written notice to the police officer, district attorney or other public servant who served the entity with such warrant.

(b) The failure of a company or entity to timely deliver the records sought by a warrant issued pursuant to subdivision one of section 690.20 of this article shall not affect the admissibility of that evidence in a criminal proceeding.

(c) The failure of a company or entity to timely deliver the records sought by a warrant issued pursuant to subdivision one of section 690.20 of this article, in the absence of a request for an extension, shall constitute prima facie evidence of criminal contempt in violation of subdivision three of section 215.50 of the penal law.

§ 33. Section 496.06 of the penal law, as added by section 14 of subpart A of part H of chapter 55 of the laws of 2014, is amended to read as follows:

§ 496.06 Public corruption.

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

2. A "specified offense" is an offense defined by any of the following provisions of this chapter: section 155.25 (petit larceny); section 155.30 (grand larceny in the fourth degree); section 155.35 (grand larceny in the third degree); section 155.40 (grand larceny in the second degree); section 155.42 (grand larceny in the first degree); section 190.60 (scheme to defraud in the [~~second~~] fifth degree); section 190.62 (scheme to defraud in the fourth degree); section 190.63 (scheme to defraud in the third degree); section 190.64 (scheme to defraud in the second degree); or section 190.65 (scheme to defraud in the first degree).

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

§ 190.77 Offenses involving theft of identity; definitions.

1. For the purposes of sections 190.78, 190.79, 190.80 [~~and~~], 190.80-a, 190.80-b, 190.80-c and 190.85 of this article "personal identifying information" means a person's name, address, telephone number, date of birth, driver's license number, social security number, place of employment, mother's maiden name, financial services account number or code, savings account number or code, checking account number or code, brokerage account number or code, credit card account number or code, debit card number or code, automated teller machine number or code, taxpayer identification number, computer system password, signature or copy of a signature, electronic signature, unique biometric data that is a fingerprint, voice print, retinal image or iris image of another person, telephone calling card number, mobile identification number or code, electronic serial number or personal identification number, or any

other name, number, code or information that may be used alone or in conjunction with other such information to assume the identity of another person.

2. For the purposes of sections 190.78, 190.79, 190.80, 190.80-a, **190.80-b, 190.80-c,** 190.81, 190.82 and 190.83 of this article:

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

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

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

§ 35. Subdivision 2 of section 190.83 of the penal law, as separately amended by chapters 226 and 279 of the laws of 2008, is amended to read as follows:

2. he or she has been previously convicted within the last five years of identity theft in the third degree as defined in section [~~190.78~~] **190.80**, identity theft in the second degree as defined in section [~~190.79~~] **190.80-a**, identity theft in the first degree as defined in section [~~190.80~~] **190.80-b**, unlawful possession of personal identification information in the third degree as defined in section 190.81, unlawful possession of personal identification information in the second degree as defined in section 190.82, unlawful possession of personal identification information in the first degree as defined in this section, [~~unlawful~~] **criminal** possession of a skimmer device in the second degree as defined in section 190.85, [~~unlawful~~] **criminal** possession of a skimmer device in the first degree as defined in section 190.86, grand larceny in the fourth degree as defined in section 155.30, grand larceny in the third degree as defined in section 155.35, grand larceny in the second degree as defined in section 155.40 or grand larceny in the first degree as defined in section 155.42 of this chapter; or

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

(s) Identity theft in the second degree, as defined in section [~~190.79~~] **190.80-a** of the penal law, identity theft in the first degree, as defined in section [~~190.80~~] **190.80-b** of the penal law, unlawful possession of personal identification information in the second degree, as defined in section 190.82 of the penal law, and unlawful possession of personal identification information in the first degree, as defined in section 190.83 of the penal law.

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

(a) "Specified offense" for purposes of this article means a class A felony offense other than an offense as defined in article two hundred twenty, a violent felony offense as defined in section 70.02, manslaughter in the second degree as defined in section 125.15, criminal tampering in the first degree as defined in section 145.20, identity

theft in the second degree as defined in section [~~190.79~~] 190.80-a, identity theft in the first degree as defined in section [~~190.80~~] 190.80-b, unlawful possession of personal identification information in the second degree as defined in section 190.82, unlawful possession of personal identification information in the first degree as defined in section 190.83, money laundering in support of terrorism in the fourth degree as defined in section 470.21, money laundering in support of terrorism in the third degree as defined in section 470.22, money laundering in support of terrorism in the second degree as defined in section 470.23, money laundering in support of terrorism in the first degree as defined in section 470.24 of this chapter, and includes an attempt or conspiracy to commit any such offense.

§ 38. Subdivision 1 and paragraph (b) of subdivision 4 of section 60.27 of the penal law, subdivision 1 as amended by chapter 279 of the laws of 2008, and paragraph (b) of subdivision 4 as amended by chapter 313 of the laws of 2011, are amended to read as follows:

1. In addition to any of the dispositions authorized by this article, the court shall consider restitution or reparation to the victim of the crime and may require restitution or reparation as part of the sentence imposed upon a person convicted of an offense, and after providing the district attorney with an opportunity to be heard in accordance with the provisions of this subdivision, require the defendant to make restitution of the fruits of his or her offense or reparation for the actual out-of-pocket loss caused thereby and, in the case of a violation of section 190.78, 190.79, 190.80, 190.80-a, 190.80-b, 190.82 or 190.83 of this chapter, any costs or losses incurred due to any adverse action taken against the victim. The district attorney shall where appropriate, advise the court at or before the time of sentencing that the victim seeks restitution or reparation, the extent of injury or economic loss or damage of the victim, and the amount of restitution or reparation sought by the victim in accordance with his or her responsibilities under subdivision two of section 390.50 of the criminal procedure law and article twenty-three of the executive law. The court shall hear and consider the information presented by the district attorney in this regard. In that event, or when the victim impact statement reports that the victim seeks restitution or reparation, the court shall require, unless the interests of justice dictate otherwise, in addition to any of the dispositions authorized by this article that the defendant make restitution of the fruits of the offense and reparation for the actual out-of-pocket loss and, in the case of a violation of section 190.78, 190.79, 190.80, 190.82 or 190.83 of this chapter, any costs or losses incurred due to any adverse action, caused thereby to the victim. In the event that restitution or reparation are not ordered, the court shall clearly state its reasons on the record. Adverse action as used in this subdivision shall mean and include actual loss incurred by the victim, including an amount equal to the value of the time reasonably spent by the victim attempting to remediate the harm incurred by the victim from the offense, and the consequential financial losses from such action.

(b) the term "victim" shall include the victim of the offense, the representative of a crime victim as defined in subdivision six of section six hundred twenty-one of the executive law, an individual whose identity was assumed or whose personal identifying information was used in violation of section 190.78, 190.79 [~~or~~], 190.80, 190.80-a or 190.80-b of this chapter, or any person who has suffered a financial loss as a direct result of the acts of a defendant in violation of section 190.78, 190.79, 190.80, 190.80-a, 190.80-b, 190.82 or 190.83 of

this chapter, a good samaritan as defined in section six hundred twenty-one of the executive law and the office of victim services or other governmental agency that has received an application for or has provided financial assistance or compensation to the victim. A victim shall also mean any owner or lawful producer of a master recording, or a trade association that represents such owner or lawful producer, that has suffered injury as a result of an offense as defined in article two hundred seventy-five of this chapter.

§ 39. Severability. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this act directly involved in the controversy in which such judgment shall have been rendered.

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