

# STATE OF NEW YORK

1563

2017-2018 Regular Sessions

## IN SENATE

January 10, 2017

Introduced by Sen. AVELLA -- 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 executive law, in relation to offenses involving theft of identity and computer tampering; and to repeal certain provisions of the penal law relating thereto

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

1 Section 1. Title K of the penal law is amended by adding a new article  
2 191 to read as follows:

3 ARTICLE 191

4 OFFENSES INVOLVING THEFT OF IDENTITY

5 Section 191.00 Definitions.

6 191.05 Identity theft in the fifth degree.

7 191.10 Identity theft in the fourth degree.

8 191.15 Identity theft in the third degree.

9 191.20 Identity theft in the second degree.

10 191.25 Identity theft in the first degree.

11 191.30 Aggravated identity theft in the second degree.

12 191.35 Aggravated identity theft in the first degree.

13 191.40 Criminal possession of a skimmer device in the second  
14 degree.

15 191.45 Criminal possession of a skimmer device in the first  
16 degree.

17 § 191.00 Definitions.

18 1. For the purposes of this article "personal identifying information"  
19 means a person's name, address, telephone number, date of birth, driv-  
20 er's license number, social security number, place of employment, moth-  
21 er's maiden name, financial services account number or code, savings  
22 account number or code, checking account number or code, brokerage  
23 account number or code, credit card account number or code, debit card  
24 number or code, automated teller machine number or code, taxpayer iden-

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

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1 tification number, computer system password, signature or copy of a  
2 signature, electronic signature, unique biometric data that is a finger-  
3 print, voice print, retinal image or iris image of another person, tele-  
4 phone calling card number, mobile identification number or code, elec-  
5 tronic serial number or personal identification number, medical  
6 information, medical insurance information, or any other name, number,  
7 code or information that may be used alone or in conjunction with other  
8 such information to assume the identity of another person.

9 2. For the purposes of this article:

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

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

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

23 (d) "medical information" means any information regarding an individ-  
24 ual's medical history, mental or physical condition, or medical treat-  
25 ment or diagnosis by a health care professional.

26 (e) "medical insurance information" means an individual's health  
27 insurance policy number or subscriber identification number, any unique  
28 identifier used by a health insurer to identify the individual or any  
29 information in an individual's application and claims history, includ-  
30 ing, but not limited to, appeals history.

31 § 191.05 Identity theft in the fifth degree.

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

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

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

41 Identity theft in the fifth degree is a class A misdemeanor.

42 § 191.10 Identity theft in the fourth degree.

43 A person is guilty of identity theft in the fourth degree when he or  
44 she knowingly and with intent to defraud:

45 1. assumes the identity of another person by presenting himself or  
46 herself as that other person, or by acting as that other person or by  
47 using personal identifying information of that other person, and there-  
48 by:

49 (a) obtains goods, money, property or services or uses credit in the  
50 name of such other person in an aggregate amount that exceeds five  
51 hundred dollars; or

52 (b) causes financial loss to such person or to another person or  
53 persons in an aggregate amount that exceeds five hundred dollars; or

54 (c) commits or attempts to commit a felony or acts as an accessory to  
55 the commission of a felony; or

1 (d) commits the crime of identity theft in the fifth degree as defined  
2 in section 191.05 of this article and has been previously convicted  
3 within the last five years of identity theft in the fifth degree as  
4 defined in section 191.05, identity theft in the fourth degree as  
5 defined in this section, identity theft in the third degree as defined  
6 in section 191.15, identity theft in the second degree as defined in  
7 section 191.20, identity theft in the first degree as defined in section  
8 191.25, criminal possession of a skimmer device in the second degree as  
9 defined in section 191.40, criminal possession of a skimmer device in  
10 the first degree as defined in section 191.45 of this article, grand  
11 larceny in the fourth degree as defined in section 155.30, grand larceny  
12 in the third degree as defined in section 155.35, grand larceny in the  
13 second degree as defined in section 155.40, grand larceny in the first  
14 degree as defined in section 155.42 of this part, forgery in the third  
15 degree as defined in section 170.05, forgery in the second degree as  
16 defined in section 170.10, forgery in the first degree as defined in  
17 section 170.15, criminal possession of a forged instrument in the third  
18 degree as defined in section 170.20, criminal possession of a forged  
19 instrument in the second degree as defined in section 170.25, or crimi-  
20 nal possession of a forged instrument in the first degree as defined in  
21 section 170.30 of this title; or

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

28 Identity theft in the fourth degree is a class E felony.

29 § 191.15 Identity theft in the third degree.

30 A person is guilty of identity theft in the third degree when he or  
31 she knowingly and with intent to defraud:

32 1. assumes the identity of another person by presenting himself or  
33 herself as that other person, or by acting as that other person or by  
34 using personal identifying information of that other person, and there-  
35 by:

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

39 (b) causes financial loss to such person or to another person or  
40 persons in an aggregate amount that exceeds two thousand dollars; or

41 (c) commits or attempts to commit a class D felony or higher level  
42 crime or acts as an accessory to the commission of a class D or higher  
43 level felony; or

44 (d) commits the crime of identity theft in the fourth degree as  
45 defined in section 191.10 of this article and has been previously  
46 convicted within the last five years of identity theft in the fifth  
47 degree as defined in section 191.05, identity theft in the fourth degree  
48 as defined in section 191.10, identity theft in the third degree as  
49 defined in this section, identity theft in the second degree as defined  
50 in section 191.20, identity theft in the first degree as defined in  
51 section 191.25, aggravated identity theft in the second degree as  
52 defined in section 191.30, aggravated identity theft in the first degree  
53 as defined in section 191.35, criminal possession of a skimmer device in  
54 the second degree as defined in section 191.40, criminal possession of a  
55 skimmer device in the first degree as defined in section 191.45 of this  
56 article, grand larceny in the fourth degree as defined in section

1 155.30, grand larceny in the third degree as defined in section 155.35,  
2 grand larceny in the second degree as defined in section 155.40 or grand  
3 larceny in the first degree as defined in section 155.42 of this part,  
4 criminal possession of a forged instrument in the third degree as  
5 defined in section 170.20, criminal possession of a forged instrument in  
6 the second degree as defined in section 170.25, criminal possession of a  
7 forged instrument in the first degree as defined in section 170.30 of  
8 this title, criminal possession of stolen property in the fifth degree  
9 as defined in section 165.40, criminal possession of stolen property in  
10 the fourth degree as defined in section 165.45, criminal possession of  
11 stolen property in the third degree as defined in section 165.50, crimi-  
12 nal possession of stolen property in the second degree as defined in  
13 section 165.52, criminal possession of stolen property in the first  
14 degree as defined in section 165.54 of this part, or criminal possession  
15 of forgery devices as defined in section 170.40 of this title; or

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

22 Identity theft in the third degree is a class D felony.

23 § 191.20 Identity theft in the second degree.

24 A person is guilty of identity theft in the second degree when he or  
25 she knowingly and with intent to defraud:

26 1. assumes the identity of another person by presenting himself or  
27 herself as that other person, or by acting as that other person or by  
28 using personal identifying information of that other person, and there-  
29 by:

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

33 (b) causes financial loss to such person or to another person or  
34 persons in an aggregate amount that exceeds twenty-five thousand  
35 dollars; or

36 (c) commits or attempts to commit a class C felony or higher level  
37 crime or acts as an accessory in the commission of a class C or higher  
38 level felony; or

39 (d) commits the crime of identity theft in the third degree as defined  
40 in section 191.15 of this article and has been previously convicted  
41 within the last five years of identity theft in the fifth degree as  
42 defined in section 191.05, identity theft in the fourth degree as  
43 defined in section 191.10, identity theft in the third degree as defined  
44 in section 191.15, identity theft in the second degree as defined in  
45 this section, identity theft in the first degree as defined in section  
46 191.25, aggravated identity theft in the second degree as defined in  
47 section 191.30, aggravated identity theft in the first degree as defined  
48 in section 191.35, criminal possession of a skimmer device in the second  
49 degree as defined in section 191.40, criminal possession of a skimmer  
50 device in the first degree as defined in section 191.45 of this article,  
51 grand larceny in the fourth degree as defined in section 155.30, grand  
52 larceny in the third degree as defined in section 155.35, grand larceny  
53 in the second degree as defined in section 155.40 or grand larceny in  
54 the first degree as defined in section 155.42 of this part, criminal  
55 possession of a forged instrument in the third degree as defined in  
56 section 170.20, criminal possession of a forged instrument in the second

1 degree as defined in section 170.25, criminal possession of a forged  
2 instrument in the first degree as defined in section 170.30 of this  
3 title, criminal possession of stolen property in the fifth degree as  
4 defined in section 165.40, criminal possession of stolen property in the  
5 fourth degree as defined in section 165.45, criminal possession of  
6 stolen property in the third degree as defined in section 165.50, crimi-  
7 nal possession of stolen property in the second degree as defined in  
8 section 165.52, criminal possession of stolen property in the first  
9 degree as defined in section 165.54 of this part, or criminal possession  
10 of forgery devices as defined in section 170.40 of this title; or

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

17 Identity theft in the second degree is a class C felony.

18 § 191.25 Identity theft in the first degree.

19 A person is guilty of identity theft in the first degree when he or  
20 she knowingly and with intent to defraud:

21 1. assumes the identity of another person by presenting himself or  
22 herself as that other person, or by acting as that other person or by  
23 using personal identifying information of that other person, and there-  
24 by:

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 two  
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 two hundred thousand  
30 dollars; or

31 (c) commits or attempts to commit a class B felony or higher level  
32 crime or acts 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  
35 defined in section 191.20 of this article and has been previously  
36 convicted within the last five years of identity theft in the fifth  
37 degree as defined in section 191.05, identity theft in the fourth degree  
38 as defined in section 191.10, identity theft in the third degree as  
39 defined in section 191.15, identity theft in the second degree as  
40 defined in section 191.20, identity theft in the first degree as defined  
41 in this section, aggravated identity theft in the second degree as  
42 defined in section 191.30, aggravated identity theft in the first degree  
43 as defined in section 191.35, criminal possession of a skimmer device in  
44 the second degree as defined in section 191.40, criminal possession of a  
45 skimmer device in the first degree as defined in section 191.45 of this  
46 article, grand larceny in the fourth degree as defined in section  
47 155.30, grand larceny in the third degree as defined in section 155.35,  
48 grand larceny in the second degree as defined in section 155.40 or grand  
49 larceny in the first degree as defined in section 155.42 of this part,  
50 criminal possession of a forged instrument in the third degree as  
51 defined in section 170.20, criminal possession of a forged instrument in  
52 the second degree as defined in section 170.25, criminal possession of a  
53 forged instrument in the first degree as defined in section 170.30 of  
54 this title, criminal possession of stolen property in the fifth degree  
55 as defined in section 165.40, criminal possession of stolen property in  
56 the fourth degree as defined in section 165.45, criminal possession of

1 stolen property in the third degree as defined in section 165.50, criminal  
2 possession of stolen property in the second degree as defined in  
3 section 165.52, criminal possession of stolen property in the first  
4 degree as defined in section 165.54 of this part, or criminal possession  
5 of forgery devices as defined in section 170.40 of this title; or

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

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

13 § 191.30 Aggravated identity theft in the second degree.

14 A person is guilty of aggravated identity theft in the second degree  
15 when he or she commits identity theft in the fifth degree as defined in  
16 section 191.05 of this article and knows that such other person is:

17 1. a vulnerable elderly person as defined in subdivision three of  
18 section 260.31 of this chapter; or

19 2. an incompetent or physically disabled person as defined in subdivi-  
20 sion four of section 260.31 of this chapter.

21 Aggravated identity theft in the second degree is a class E felony.

22 § 191.35 Aggravated identity theft in the first degree.

23 A person is guilty of aggravated identity theft in the first degree  
24 when he or she knowingly with intent to defraud assumes the identity of  
25 another person by presenting himself or herself as that other person, or  
26 by acting as that other person or by using personal identifying informa-  
27 tion of that other person, and knows that such person is a member of the  
28 armed forces, and knows that such member is presently deployed outside  
29 of the continental United States, and:

30 1. thereby obtains goods, money, property or services or uses credit  
31 in the name of such member of the armed forces in an aggregate amount  
32 that exceeds five hundred dollars; or

33 2. thereby causes financial loss to such member of the armed forces in  
34 an aggregate amount that exceeds five hundred dollars.

35 Aggravated identity theft in the first degree is a class D felony.

36 § 191.40 Criminal possession of a skimmer device in the second degree.

37 1. A person is guilty of criminal possession of a skimmer device in  
38 the second degree when he or she possesses a skimmer device with the  
39 intent that such device be used in furtherance of the commission of the  
40 crimes of identity theft or grand larceny in the fourth degree as  
41 defined in section 155.30, grand larceny in the third degree as defined  
42 in section 155.35, grand larceny in the second degree as defined in  
43 section 155.40 or grand larceny in the first degree as defined in  
44 section 155.42 of this part, criminal possession of stolen property in  
45 the fourth degree as defined in section 165.45, criminal possession of  
46 stolen property in the third degree as defined in section 165.50, criminal  
47 possession of stolen property in the second degree as defined in  
48 section 165.52, or criminal possession of stolen property in the first  
49 degree as defined in section 165.54 of this part.

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

54 Criminal possession of a skimmer device in the second degree is a  
55 class D felony.

56 § 191.45 Criminal possession of a skimmer device in the first degree.

1 A person is guilty of criminal possession of a skimmer device in the  
2 first degree when he or she commits the crime of unlawful possession of  
3 a skimmer device in the second degree and he or she has been previously  
4 convicted within the last five years of identity theft in the fourth  
5 degree as defined in section 191.10, identity theft in the third degree  
6 as defined in section 191.15, identity theft in the second degree as  
7 defined in section 191.20, identity theft in the first degree as defined  
8 in section 191.25, unlawful possession of a skimmer device in the second  
9 degree as defined in section 191.40 of this article, unlawful possession  
10 of a skimmer device in the first degree as defined in this section,  
11 grand larceny in the fourth degree as defined in section 155.30, grand  
12 larceny in the third degree as defined in section 155.35, grand larceny  
13 in the second degree as defined in section 155.40, grand larceny in the  
14 first degree as defined in section 155.42 of this part, forgery in the  
15 third degree as defined in section 170.05, forgery in the second degree  
16 as defined in section 170.10, forgery in the first degree as defined in  
17 section 170.15, criminal possession of a forged instrument in the third  
18 degree as defined in section 170.20, criminal possession of a forged  
19 instrument in the second degree as defined in section 170.25, criminal  
20 possession of a forged instrument in the first degree as defined in  
21 section 170.30 of this title, criminal possession of stolen property in  
22 the fifth degree as defined in section 165.40, criminal possession of  
23 stolen property in the fourth degree as defined in section 165.45, crim-  
24 inal possession of stolen property in the third degree as defined in  
25 section 165.50, criminal possession of stolen property in the second  
26 degree as defined in section 165.52, criminal possession of stolen prop-  
27 erty in the first degree as defined in section 165.54 of this part, or  
28 criminal possession of forgery devices as defined in section 170.40 of  
29 this title.

30 Criminal possession of a skimmer device in the first degree is a class  
31 C felony.

32 § 2. Paragraph (a) of subdivision 1 of section 460.10 of the penal  
33 law, as amended by chapter 368 of the laws of 2015, is amended to read  
34 as follows:

35 (a) Any of the felonies set forth in this chapter: sections 120.05,  
36 120.10 and 120.11 relating to assault; sections 121.12 and 121.13 relat-  
37 ing to strangulation; sections 125.10 to 125.27 relating to homicide;  
38 sections 130.25, 130.30 and 130.35 relating to rape; sections 135.20 and  
39 135.25 relating to kidnapping; sections 135.35 and 135.37 relating to  
40 labor trafficking; section 135.65 relating to coercion; sections 140.20,  
41 140.25 and 140.30 relating to burglary; sections 145.05, 145.10 and  
42 145.12 relating to criminal mischief; article one hundred fifty relating  
43 to arson; sections 155.30, 155.35, 155.40 and 155.42 relating to grand  
44 larceny; sections 177.10, 177.15, 177.20 and 177.25 relating to health  
45 care fraud; article one hundred sixty relating to robbery; sections  
46 165.45, 165.50, 165.52 and 165.54 relating to criminal possession of  
47 stolen property; sections 165.72 and 165.73 relating to trademark coun-  
48 terfeiting; sections 170.10, 170.15, 170.25, 170.30, 170.40, 170.65 and  
49 170.70 relating to forgery; sections 175.10, 175.25, 175.35, 175.40 and  
50 210.40 relating to false statements; sections 176.15, 176.20, 176.25 and  
51 176.30 relating to insurance fraud; sections 178.20 and 178.25 relating  
52 to criminal diversion of prescription medications and prescriptions;  
53 sections 180.03, 180.08, 180.15, 180.25, 180.40, 180.45, 200.00, 200.03,  
54 200.04, 200.10, 200.11, 200.12, 200.20, 200.22, 200.25, 200.27, 200.56,  
55 215.00, 215.05 and 215.19; sections 187.10, 187.15, 187.20 and 187.25  
56 relating to residential mortgage fraud, sections 190.40 and 190.42

1 relating to criminal usury; section 190.65 relating to schemes to  
2 defraud; sections 191.05, 191.10, 191.15, 191.20, 191.25, 191.30, and  
3 191.35 relating to identity theft; any felony defined in article four  
4 hundred ninety-six; sections 205.60 and 205.65 relating to hindering  
5 prosecution; sections 210.10, 210.15, and 215.51 relating to perjury and  
6 contempt; section 215.40 relating to tampering with physical evidence;  
7 sections 220.06, 220.09, 220.16, 220.18, 220.21, 220.31, 220.34, 220.39,  
8 220.41, 220.43, 220.46, 220.55, 220.60, 220.65 and 220.77 relating to  
9 controlled substances; sections 225.10 and 225.20 relating to gambling;  
10 sections 230.25, 230.30, and 230.32 relating to promoting prostitution;  
11 section 230.34 relating to sex trafficking; sections 235.06, 235.07,  
12 235.21 and 235.22 relating to obscenity; sections 263.10 and 263.15  
13 relating to promoting a sexual performance by a child; sections 265.02,  
14 265.03, 265.04, 265.11, 265.12, 265.13 and the provisions of section  
15 265.10 which constitute a felony relating to firearms and other danger-  
16 ous weapons; sections 265.14 and 265.16 relating to criminal sale of a  
17 firearm; section 275.10, 275.20, 275.30, or 275.40 relating to unauthor-  
18 ized recordings; and sections 470.05, 470.10, 470.15 and 470.20 relating  
19 to money laundering; or

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

23 (a) "Specified offense" for purposes of this article means a class A  
24 felony offense other than an offense as defined in article two hundred  
25 twenty, a violent felony offense as defined in section 70.02,  
26 manslaughter in the second degree as defined in section 125.15, criminal  
27 tampering in the first degree as defined in section 145.20, identity  
28 theft in the second degree as defined in section ~~190.79~~ 191.20, iden-  
29 tity theft in the first degree as defined in section ~~190.80~~ 191.25,  
30 unlawful possession of personal identification information in the second  
31 degree as defined in section 190.82, unlawful possession of personal  
32 identification information in the first degree as defined in section  
33 190.83, money laundering in support of terrorism in the fourth degree as  
34 defined in section 470.21, money laundering in support of terrorism in  
35 the third degree as defined in section 470.22, money laundering in  
36 support of terrorism in the second degree as defined in section 470.23,  
37 money laundering in support of terrorism in the first degree as defined  
38 in section 470.24 of this chapter, and includes an attempt or conspiracy  
39 to commit any such offense.

40 § 4. Sections 190.77, 190.78, 190.79, 190.80, 190.80-a, 190.85 and  
41 190.86 of the penal law are REPEALED.

42 § 5. Subdivision 1 of section 60.27 of the penal law, as amended by  
43 chapter 279 of the laws of 2008, is amended to read as follows:

44 1. In addition to any of the dispositions authorized by this article,  
45 the court shall consider restitution or reparation to the victim of the  
46 crime and may require restitution or reparation as part of the sentence  
47 imposed upon a person convicted of an offense, and after providing the  
48 district attorney with an opportunity to be heard in accordance with the  
49 provisions of this subdivision, require the defendant to make restitu-  
50 tion of the fruits of his or her offense or reparation for the actual  
51 out-of-pocket loss caused thereby and, in the case of a violation of  
52 section ~~190.78, 190.79, 190.80, 190.82 or 190.83~~ 191.05, 191.10,  
53 191.15, 191.20 or 191.25 of this chapter, any costs or losses incurred  
54 due to any adverse action taken against the victim. The district attor-  
55 ney shall where appropriate, advise the court at or before the time of  
56 sentencing that the victim seeks restitution or reparation, the extent



1 of injury or economic loss or damage of the victim, and the amount of  
2 restitution or reparation sought by the victim in accordance with his or  
3 her responsibilities under subdivision two of section 390.50 of the  
4 criminal procedure law and article twenty-three of the executive law.  
5 The court shall hear and consider the information presented by the  
6 district attorney in this regard. In that event, or when the victim  
7 impact statement reports that the victim seeks restitution or repara-  
8 tion, the court shall require, unless the interests of justice dictate  
9 otherwise, in addition to any of the dispositions authorized by this  
10 article that the defendant make restitution of the fruits of the offense  
11 and reparation for the actual out-of-pocket loss and, in the case of a  
12 violation of section [~~190.78, 190.79, 190.80, 190.82 or 190.83~~] 191.05,  
13 191.10, 191.15, 191.20 or 191.25 of this chapter, any costs or losses  
14 incurred due to any adverse action, caused thereby to the victim. In the  
15 event that restitution or reparation are not ordered, the court shall  
16 clearly state its reasons on the record. Adverse action as used in this  
17 subdivision shall mean and include actual loss incurred by the victim,  
18 including an amount equal to the value of the time reasonably spent by  
19 the victim attempting to remediate the harm incurred by the victim from  
20 the offense, and the consequential financial losses from such action.

21 § 6. Paragraph (b) of subdivision 4 of section 60.27 of the penal law,  
22 as amended by chapter 313 of the laws of 2011, is amended to read as  
23 follows:

24 (b) the term "victim" shall include the victim of the offense, the  
25 representative of a crime victim as defined in subdivision six of  
26 section six hundred twenty-one of the executive law, an individual whose  
27 identity was assumed or whose personal identifying information was used  
28 in violation of section [~~190.78, 190.79 or 190.80~~] 191.05, 191.10,  
29 191.15, 191.20 or 191.25 of this chapter, or any person who has suffered  
30 a financial loss as a direct result of the acts of a defendant in  
31 violation of section [~~190.78, 190.79, 190.80, 190.82 or 190.83~~] 191.05,  
32 191.10, 191.15, 191.20 or 191.25 of this chapter, a good samaritan as  
33 defined in section six hundred twenty-one of the executive law and the  
34 office of victim services or other governmental agency that has received  
35 an application for or has provided financial assistance or compensation  
36 to the victim. A victim shall also mean any owner or lawful producer of  
37 a master recording, or a trade association that represents such owner or  
38 lawful producer, that has suffered injury as a result of an offense as  
39 defined in article two hundred seventy-five of this chapter.

40 § 7. Subdivision 2 of section 646 of the executive law, as amended by  
41 chapter 346 of the laws of 2007, is amended to read as follows:

42 2. An individual whose identity was assumed or whose personal identi-  
43 fying information, as defined in [~~section 190.77~~] subdivision one of  
44 section 191.00 of the penal law, was used in violation of section  
45 [~~190.78, 190.79 or 190.80~~] 191.05, 191.10, 191.15, 191.20 or 191.25 of  
46 the penal law, or any person who has suffered a financial loss as a  
47 direct result of the acts of a defendant in violation of section  
48 [~~190.78, 190.79, 190.80, 190.82 or 190.83~~] 191.05, 191.10, 191.15,  
49 191.20 or 191.25 of the penal law, who has learned or reasonably  
50 suspects that his or her personal identifying information has been  
51 unlawfully used by another, may make a complaint to the local law  
52 enforcement agency of the county in which any part of the offense took  
53 place regardless of whether the defendant was actually present in such  
54 county, or in the county in which the person who suffered financial loss  
55 resided at the time of the commission of the offense, or in the county  
56 where the person whose personal identification information was used in

1 the commission of the offense resided at the time of the commission of  
2 the offense as provided in paragraph (1) of subdivision four of section  
3 20.40 of the criminal procedure law. Said local law enforcement agency  
4 shall take a police report of the matter and provide the complainant  
5 with a copy of such report free of charge.

6 § 8. Paragraph (c) of subdivision 5 of section 156.00 of the penal  
7 law, as amended by chapter 558 of the laws of 2006, is amended to read  
8 as follows:

9 (c) is not and is not intended to be available to anyone other than  
10 the person or persons rightfully in possession thereof or selected  
11 persons having access thereto with his, her or their consent and which  
12 [~~accords or may accord such rightful possessors an advantage over~~  
13 ~~competitors or other persons who do not have knowledge or the benefit~~  
14 ~~thereof~~] persons other than those rightly in possession, know or should  
15 know that said material is not intended to be available to them.

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

18 § 156.20 Computer tampering in the [~~fourth~~] fifth degree.

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

24 Computer tampering in the [~~fourth~~] fifth degree is a class A misdemea-  
25 nor.

26 § 10. Section 156.25 of the penal law, as amended by chapter 89 of the  
27 laws of 1993, subdivision 2 as amended by chapter 376 of the laws of  
28 1997, is amended to read as follows:

29 § 156.25 Computer tampering in the [~~third~~] fourth degree.

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

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

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

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

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

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

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

45 § 156.26 Computer tampering in the [~~second~~] third degree.

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

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

52 2. computer material that contains records of the medical history or  
53 medical treatment of an identified or readily identifiable individual or  
54 individuals and as a result of such alteration or destruction, such  
55 individual or individuals suffer serious physical injury, and he or she

1 is aware of and consciously disregards a substantial and unjustifiable  
2 risk that such serious physical injury may occur.

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

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

6 § 156.27 Computer tampering in the [~~first~~] second degree.

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

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

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

15 § 156.28 Computer tampering in the first degree.

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

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

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