

STATE OF NEW YORK

2406

2017-2018 Regular Sessions

IN SENATE

January 13, 2017

Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

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

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

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

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

10 2. "Obtain" includes, but is not limited to, the bringing about of a
11 transfer or purported transfer of property or of a legal interest there-
12 in, whether to the obtainer or another. With regard to personal identi-
13 fying information, computer data or computer program, obtain includes
14 duplicating, recording, copying, downloading, uploading or printing out
15 the information, data, or program, or obtaining a physical object
16 containing such information. With regard to service, obtain includes,
17 but is not limited to, using or accessing a service.

18 3. "Deprive." To "deprive" another of property means (a) to withhold
19 it or cause it to be withheld from him or her permanently or for so
20 extended a period or under such circumstances that the major portion of
21 its economic value or benefit is lost to him or her, or (b) to dispose
22 of the property in such manner or under such circumstances as to render
23 it unlikely that an owner will recover such property. When the property
24 is personal identifying information, computer data or computer program,
25 to deprive another of its means to obtain it or cause a third person to

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

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1 obtain it under such circumstances that a substantial portion of the
2 economic benefit or value of having control over it or authority over
3 its use is lost to an owner. To deprive another of service is to use or
4 access a service or cause a third person to use or access a service
5 under such circumstances that some of the economic benefit or value of
6 having control or authority over providing the service is lost to an
7 owner.

8 4. "Appropriate." To "appropriate" property of another to oneself or a
9 third person means (a) to exercise control over it, or to aid a third
10 person to exercise control over it, permanently or for so extended a
11 period or under such circumstances as to acquire the major portion of
12 its economic value or benefit, or (b) to dispose of the property for the
13 benefit of oneself or a third person. When the property is personal
14 identifying information, computer data or computer program of another,
15 to appropriate it to oneself or a third person means to obtain it under
16 such circumstances as to acquire the ability to use it or dispose of it
17 to the economic benefit of oneself or a third person or to the economic
18 detriment or damage of an owner. To appropriate a service provided by
19 another to oneself or a third person means to use or access the service
20 under such circumstances as to acquire the ability to use it to the
21 economic benefit of oneself or a third person or to the economic detri-
22 ment or damage of an owner.

23 10. "Computer program" means an ordered set of data representing coded
24 instructions or statements that when executed by the computer, cause the
25 computer to process data or direct the computer to perform one or more
26 computer operations or both and may be in any form, including magnetic
27 storage media, optical media, computing devices, punched cards, or
28 stored internally in the memory of the computer.

29 11. "Computer data" means a representation of information, knowledge,
30 facts, concept or instructions which are being processed, or have been
31 processed in a computer and may be in any form including magnetic stor-
32 age media, punched cards, or stored internally in the memory of the
33 computer.

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

36 (c) By committing the crime of issuing a bad check, as defined in
37 section 190.05, or by obtaining property or service by using or present-
38 ing a form of payment or personal identifying information the actor
39 knows he or she is not authorized to use or knows is expired or forged
40 or otherwise not valid;

41 (f) By theft of service. Theft of service means either: (i) using or
42 accessing a service in a manner that otherwise requires payment and
43 intentionally failing to pay for such use or access by either tampering
44 without authority with a delivery, payment, or measurement device or
45 mechanism, or by entering or leaving premises where the service is
46 provided by stealth or by evading a physical barrier, or (ii) using or
47 accessing a service in a manner that otherwise requires payment or the
48 presentation of personal identifying information and using or presenting
49 a form of payment or personal identifying information the actor knows he
50 or she is not authorized to use or knows is expired or forged or other-
51 wise not valid.

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

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

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

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

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

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

6 § 155.42 Grand larceny in the first degree.

7 A person is guilty of grand larceny in the first degree when he or she
8 steals property or a service and when the value of the property or
9 service exceeds one million dollars; or the property is personal identi-
10 fying information of one thousand or more persons.

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

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

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

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

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

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

39 8. "Without authorization" means to use or to access a computer,
40 computer service or computer network without the permission of the owner
41 or lessor or someone licensed or privileged by the owner or lessor where
42 such person knew that his or her use or access was without permission or
43 after actual notice to such person that such use or access was without
44 permission, or that such use or access was for purposes other than those
45 for which permission was granted by the owner, lessor, or someone
46 licensed or privileged by such owner or lessor. It shall also mean the
47 access of a computer service by a person without permission where such
48 person knew that such access was without permission or after actual
49 notice to such person, that such access was without permission.

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

§ 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

1 he or she intentionally alters in any manner or destroys computer data
2 or a computer program and thereby causes damages in an aggregate amount
3 of one million dollars or more.

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

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

7 § 156.60 Denial of service attack on a computer, computer service,
8 computer program, or computer network in the fifth degree.

9 A person is guilty of denial of service attack on a computer, computer
10 service, computer program, or computer network in the fifth degree when
11 he or she acting alone or with others knowingly causes the transmission
12 of a program, information, code, or command, or other electronic commu-
13 nication, and as a result of such conduct, intentionally makes the
14 computer, computer service, computer program, or computer network tempo-
15 rarily or indefinitely unavailable to its intended users.

16 Denial of service attack on a computer, computer service, computer
17 program, or computer network in the fifth degree is a class A misdemea-
18 nor.

19 § 156.65 Denial of service attack on a computer, computer service,
20 computer program, or computer network in the fourth degree.

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

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

30 § 156.70 Denial of service attack on a computer, computer service,
31 computer program, or computer network in the third degree.

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

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

42 § 156.75 Denial of service attack on a computer, computer service,
43 computer program, or computer network in the second degree.

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

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

55 § 156.80 Denial of service attack on a computer, computer service,
56 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. Section 190.60 of the penal law, as amended by chapter 491 of the laws of 1992, subdivision 1 as amended by chapter 357 of the laws of 1996, is amended to read as follows:

§ 190.60 Scheme to defraud in the [~~second~~] fifth degree.

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

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

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

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

15 § 190.62 Scheme to defraud in the fourth degree.

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

18 1. intends to obtain property or service from ten or more persons; or
 19 2. the value of the property or service obtained exceeds one thousand
 20 dollars; or

21 3. intends to obtain and does obtain property or service from at least
 22 one vulnerable elderly person as defined in section 260.31 of this chap-
 23 ter.

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

25 § 190.63 Scheme to defraud in the third degree.

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

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

30 2. the value of the property or service obtained exceeds three thou-
 31 sand dollars.

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

33 § 190.64 Scheme to defraud in the second degree.

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

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

38 2. the value of the property or service obtained exceeds fifty thou-
 39 sand dollars.

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

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

43 § 190.65 Scheme to defraud in the first degree.

44 [~~1.~~] A person is guilty of a scheme to defraud in the first degree

45 when he or she [~~+~~-(a)] engages in conduct constituting a scheme [~~consti-~~
 46 ~~tuting a systematic ongoing course of conduct with intent~~] to defraud

47 [~~ten~~] in the fifth degree and intends to obtain property or service from
 48 one thousand or more persons or to obtain property from ten or more

49 persons by false or fraudulent pretenses, representations or promises,
 50 and so obtains property from one or more of such persons; [~~or~~-(b)]

51 ~~engages in a scheme constituting a systematic ongoing course of conduct~~
 52 ~~with intent to defraud more than one person or to obtain property from~~

53 ~~more than one person by false or fraudulent pretenses, representations~~
 54 ~~or promises, and so obtains] and value of the property [with a value in~~

55 ~~excess of one thousand dollars from one or more such persons; or~~-(c)
 56 ~~engages in a scheme constituting a systematic ongoing course of conduct~~

~~with intent to defraud more than one person, more than one of whom is a vulnerable elderly person as defined in subdivision three of section 260.30 of this chapter or to obtain property from more than one person, more than one of whom is a vulnerable elderly person as defined in subdivision three of section 260.30 of this chapter, by false or fraudulent pretenses, representations or promises, and so obtains property from one or more such persons.~~

~~2. In any prosecution under this section, it shall be necessary to prove the identity of at least one person from whom the defendant so obtained property, but it shall not be necessary to prove the identity of any other intended victim, provided that in any prosecution under paragraph (c) of subdivision one of this section, it shall be necessary to prove the identity of at least one such vulnerable elderly person as defined in subdivision three of section 260.30 of this chapter] or service obtained exceeds one million dollars.~~

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

§ 24. 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.

§ 25. 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 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.

§ 26. 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.

§ 27. 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.

§ 28. 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, identi-~~

~~ty 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.

§ 29. Paragraph (1) 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:

(1) 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.

§ 30. 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 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

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

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

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

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

- 22 (a) A designated or described place or premises;
23 (b) A designated or described vehicle, as that term is defined in
24 section 10.00 of the penal law;
25 (c) A designated or described person[~~r~~];
26 (d) A designated or described electronic communication service or
27 remote computing service.

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

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

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

1 3. Any provision of subdivision one of this section to the contrary
2 notwithstanding, a search warrant that is issued pursuant to subdivision
3 three of section 690.20 of this article is deemed executed at the time
4 that service is made upon the electronic communication service or remote
5 computing service entity pursuant to such subdivision.

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

9 § 496.06 Public corruption.

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

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

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

29 § 190.77 Offenses involving theft of identity; definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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 ~~[ex]~~, 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.

§ 40. This act shall take effect immediately.