

STATE OF NEW YORK

2406--A

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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law and the criminal procedure law, in relation to cyber crimes; and to repeal certain provisions of the penal law relating to scheme to defraud

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

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 fyng 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

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

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1 it unlikely that an owner will recover such property. When the property
2 is personal identifying information, computer data or computer program,
3 to deprive another of its means to obtain it or cause a third person to
4 obtain it under such circumstances that a substantial portion of the
5 economic benefit or value of having control over it or authority over
6 its use is lost to an owner. To deprive another of service is to use or
7 access a service or cause a third person to use or access a service
8 under such circumstances that some of the economic benefit or value of
9 having control or authority over providing the service is lost to an
10 owner.

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

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

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

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

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

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

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

1 1. Except as otherwise specified in this section, value means the
2 market value of the property at the time and place of the crime, or if
3 such cannot be satisfactorily ascertained, the cost of replacement of
4 the property within a reasonable time after the crime. With regard to
5 service, value shall also mean the cost of providing the service at the
6 time of the crime, and with regard to the value of computer data or
7 computer program value shall mean the replacement cost or the market
8 value at the time and place of the crime, or the cost to write or devel-
9 op such data and/or program, whichever is greater.

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

12 § 155.23 Petit theft of service.

13 A person is guilty of petit theft of service when he or she steals a
14 service.

15 Petit theft of service is a class B misdemeanor.

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

17 § 155.25 Petit larceny.

18 A person is guilty of petit larceny when he or she steals property, or
19 steals a service and the value of the service exceeds five hundred
20 dollars.

21 Petit larceny is a class A misdemeanor.

22 § 6. The opening paragraph and subdivisions 1, 4 and 6 of section
23 155.30 of the penal law, the opening paragraph and subdivisions 1 and 6
24 as amended by chapter 515 of the laws of 1986, subdivision 4 as amended
25 by chapter 556 of the laws of 1987, are amended to read as follows:

26 A person is guilty of grand larceny in the fourth degree when he or
27 she steals property or a service and when:

28 1. The value of the property or service exceeds one thousand dollars;
29 or

30 4. The property consists of a credit card or debit card or personal
31 identifying information; or

32 6. The property or service, regardless of its nature and value, is
33 obtained by extortion; or

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

36 § 155.35 Grand larceny in the third degree.

37 A person is guilty of grand larceny in the third degree when he or she
38 steals property or a service and:

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

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

42 3. the property is personal identifying information of twenty-five or
43 more persons.

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

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

47 § 155.40 Grand larceny in the second degree.

48 A person is guilty of grand larceny in the second degree when he or
49 she steals property or a service and when:

50 1. The value of the property or service exceeds fifty thousand
51 dollars; or

52 2. The property or service, regardless of its nature and value, is
53 obtained by extortion committed by instilling in the victim a fear that
54 the actor or another person will (a) cause physical injury to some
55 person in the future, or (b) cause damage to property, or (c) use or
56 abuse his or her position as a public servant by engaging in conduct

1 within or related to his or her official duties, or by failing or refus-
2 ing to perform an official duty, in such manner as to affect some person
3 adversely, or

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

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

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

9 § 155.42 Grand larceny in the first degree.

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

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

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

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

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

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

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

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

50 access of a computer service by a person without permission where such
51 person knew that such access was without permission or after actual
52 notice to such person, that such access was without permission.

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

1 on the computer, computer service or computer network shall be presump-
2 tive evidence that such person used or accessed such computer, computer
3 service or computer network without authorization.

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

6 § 156.20 Computer tampering in the [~~fourth~~] fifth degree.

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

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

14 § 12. Section 156.25 of the penal law, as amended by chapter 89 of the
15 laws of 1993, subdivision 2 as amended by chapter 376 of the laws of
16 1997, is amended to read as follows:

17 § 156.25 Computer tampering in the [~~third~~] fourth degree.

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

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

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

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

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

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

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

33 § 156.26 Computer tampering in the [~~second~~] third degree.

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

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

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

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

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

48 § 156.27 Computer tampering in the [~~first~~] second degree.

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

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

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

1 § 156.28 Computer tampering in the first degree.

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

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

8 § 16. The penal law is amended by adding five new sections 156.60,
9 156.65, 156.70, 156.75 and 156.80 to read as follows:

10 § 156.60 Denial of service attack on a computer, computer service,
11 computer program, or computer network in the fifth degree.

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

19 Denial of service attack on a computer, computer service, computer
20 program, or computer network in the fifth degree is a class A misdemea-
21 nor.

22 § 156.65 Denial of service attack on a computer, computer service,
23 computer program, or computer network in the fourth degree.

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

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

33 § 156.70 Denial of service attack on a computer, computer service,
34 computer program, or computer network in the third degree.

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

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

45 § 156.75 Denial of service attack on a computer, computer service,
46 computer program, or computer network in the second degree.

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

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

3 § 156.80 Denial of service attack on a computer, computer service,
4 computer program, or computer network in the first degree.

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

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

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

18 2. The property consists of a credit card, debit card or public bene-
19 fit card, or personal identifying information as defined in section
20 190.77 of this chapter; or

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

23 § 165.50 Criminal possession of stolen property in the third degree.

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

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

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

35 § 165.52 Criminal possession of stolen property in the second degree.

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

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

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

47 § 165.54 Criminal possession of stolen property in the first degree.

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

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

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

4 § 190.60 Scheme to defraud defined.

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

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

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

19 § 190.61 Scheme to defraud in the fifth degree.

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

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

23 § 190.62 Scheme to defraud in the fourth degree.

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

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

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

29 3. intends to obtain and does obtain property or service from at least
30 one vulnerable elderly person as defined in subdivision three of section
31 260.31 of this chapter.

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

33 § 190.63 Scheme to defraud in the third degree.

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

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

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

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

41 § 190.64 Scheme to defraud in the second degree.

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

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

46 2. the value of the property or service obtained exceeds fifty thou-
47 sand dollars.

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

49 § 190.65 Scheme to defraud in the first degree.

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

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

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

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

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

3 § 190.78 Identity theft in the [~~third~~] fifth degree.

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

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

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

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

14 § 23. Section 190.79 of the penal law, as added by chapter 619 of the
15 laws of 2002, subdivision 4 as amended by chapter 279 of the laws of
16 2008, is amended to read as follows:

17 § 190.79 Identity theft in the [~~second~~] fourth degree.

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

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

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

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

30 4. commits the crime of identity theft in the [~~third~~] fifth degree as
31 defined in section 190.78 of this article and has been previously

32 convicted within the last [~~five years of identity theft in the third~~
33 ~~degree as defined in section 190.78, identity theft in the second degree~~

34 ~~as defined in this section, identity theft in the first degree as~~
35 ~~defined in section 190.80, unlawful possession of personal identifica-~~

36 ~~tion information in the third degree as defined in section 190.81,~~
37 ~~unlawful possession of personal identification information in the second~~

38 ~~degree as defined in section 190.82, unlawful possession of personal~~
39 ~~identification information in the first degree as defined in section~~

40 ~~190.83, unlawful possession of a skimmer device in the second degree as~~
41 ~~defined in section 190.85, unlawful possession of a skimmer device in~~

42 ~~the first degree as defined in section 190.86, grand larceny in the~~
43 ~~fourth degree as defined in section 155.30, grand larceny in the third~~

44 ~~degree as defined in section 155.35, grand larceny in the second degree~~
45 ~~as defined in section 155.40 or grand larceny in the first degree as~~

46 ~~defined in section 155.42 of this chapter] ten years, excluding any time
47 period during which such person was incarcerated for any reason, of any~~

48 crime in this article or article one hundred seventy of this chapter, or
49 of any larceny crime as defined in article one hundred fifty-five of

50 this chapter, or of any criminal possession of stolen property crime as
51 defined in article one hundred sixty-five of this chapter; or he or she

52 knowingly and with intent to defraud assumes the identity of three or
53 more persons by presenting himself or herself as those persons or by

54 acting as those persons or by using personal identifying information of
55 any of those persons and thereby obtains goods, money, property or

56 services or uses credit in the name of at least one such person, or

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

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

4 § 24. Section 190.80 of the penal law, as added by chapter 619 of the
5 laws of 2002, subdivision 4 as amended by chapter 279 of the laws of
6 2008, is amended to read as follows:

7 § 190.80 Identity theft in the [~~first~~] third degree.

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

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

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

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

21 4. commits the crime of identity theft in the [~~second~~] fourth degree
22 as defined in section 190.79 of this article and has been previously
23 convicted within the last [~~five years of identity theft in the third~~
24 ~~degree as defined in section 190.78, identity theft in the second degree~~
25 ~~as defined in section 190.79, identity theft in the first degree as~~
26 ~~defined in this section, unlawful possession of personal identification~~
27 ~~information in the third degree as defined in section 190.81, unlawful~~
28 ~~possession of personal identification information in the second degree~~
29 ~~as defined in section 190.82, unlawful possession of personal identifi-~~
30 ~~cation information in the first degree as defined in section 190.83,~~
31 ~~unlawful possession of a skimmer device in the second degree as defined~~
32 ~~in section 190.85, unlawful possession of a skimmer device in the first~~
33 ~~degree as defined in section 190.86, grand larceny in the fourth degree~~
34 ~~as defined in section 155.30, grand larceny in the third degree as~~
35 ~~defined in section 155.35, grand larceny in the second degree as defined~~
36 ~~in section 155.40 or grand larceny in the first degree as defined in~~
37 ~~section 155.42 of this chapter] ten years, excluding any time period
38 during which such person was incarcerated for any reason, of any crime
39 in this article or article one hundred seventy of this chapter, or of
40 any larceny crime as defined in article one hundred fifty-five of this
41 chapter, or of any criminal possession of stolen property crime as
42 defined in article one hundred sixty-five of this chapter; or assumes
43 the identity of ten or more persons by presenting himself or herself as
44 those other persons, or by acting as those other persons, or by using
45 personal identifying information of those other persons, and thereby
46 obtaining goods, money, property or services or uses credit in the name
47 of at least one such person, or causes financial loss to at least one
48 such person, to another person or persons.~~

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

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

53 § 190.80-a Identity theft in the second degree.

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

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

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

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

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

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

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

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

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

26 § 190.80-b Identity theft in the first degree.

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

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

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

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

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

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

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

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

56 § 190.80-c Aggravated identity theft.

1 A person is guilty of aggravated identity theft when he or she know-
2 ingly and with intent to defraud assumes the identity of another person
3 by presenting himself or herself as that other person, or by acting as
4 that other person or by using personal identifying information of that
5 other person, and knows that such person is a member of the armed forc-
6 es, and knows that such member is presently deployed outside of the
7 continental United States or knows that such person is a vulnerable
8 elderly person or a physically disabled person as such terms are defined
9 in section 260.31 of this chapter and:

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

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

15 Aggravated identity theft is a class D felony.

16 § 26. Sections 190.85 and 190.86 of the penal law, as added by chapter
17 279 of the laws of 2008, are amended to read as follows:

18 § 190.85 [~~Unlawful~~] Criminal possession of a skimmer device in the
19 second degree.

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

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

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

34 § 190.86 [~~Unlawful~~] Criminal possession of a skimmer device in the first
35 degree.

36 A person is guilty of [~~unlawful~~] criminal possession of a skimmer
37 device in the first degree when he or she commits the crime of [~~unlaw-~~
38 ~~ful~~] criminal possession of a skimmer device in the second degree and he
39 or she has been previously convicted within the last [~~five years of~~
40 ~~identity theft in the third degree as defined in section 190.78, identity~~
41 ~~theft in the second degree as defined in section 190.79, identity~~
42 ~~theft in the first degree as defined in section 190.80, unlawful~~
43 ~~possession of personal identification information in the third degree as~~
44 ~~defined in section 190.81, unlawful possession of personal identifica-~~
45 ~~tion information in the second degree as defined in section 190.82,~~
46 ~~unlawful possession of personal identification information in the first~~
47 ~~degree as defined in section 190.83, unlawful possession of a skimmer~~
48 ~~device in the second degree as defined in section 190.85, unlawful~~
49 ~~possession of a skimmer device in the first degree as defined in this~~
50 ~~section, grand larceny in the fourth degree as defined in section~~
51 ~~155.30, grand larceny in the third degree as defined in section 155.35,~~
52 ~~grand larceny in the second degree as defined in section 155.40 or grand~~
53 ~~larceny in the first degree as defined in section 155.42 of this chap-~~
54 ~~ter] ten years, excluding any time during which such person was incar-
55 cerated for any reason, for any crime in this article or article one
56 hundred seventy of this chapter, or of any larceny crime as defined in~~

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

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

6 § 27. Paragraph (1) of subdivision 4 of section 20.40 of the criminal
7 procedure law, as amended by section 3 of subpart C of part C of chapter
8 97 of the laws of 2011, is amended to read as follows:

9 (1) An offense of identity theft, larceny, criminal possession of
10 stolen property, or unlawful possession of personal identifying informa-
11 tion, in which the property stolen or criminally possessed is personal
12 identifying information or computer data or computer program, and all
13 criminal acts committed as part of the same criminal transaction as
14 defined in subdivision two of section 40.10 of this chapter may be pros-
15 ecuted (i) in any county in which part of the offense took place regard-
16 less of whether the defendant was actually present in such county, or
17 (ii) in the county in which the person who suffers financial loss
18 resided at the time of the commission of the offense, or (iii) in the
19 county where the person whose personal identifying information was used
20 in the commission of the offense resided at the time of the commission
21 of the offense. The law enforcement agency of any such county shall take
22 a police report of the matter and provide the complainant with a copy of
23 such report at no charge.

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

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

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

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

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

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

49 3. A court authorized to issue search warrants under this article
50 shall be deemed a "court of competent jurisdiction" under 18 U.S.C.
51 section 2711(3) of the Electronic Communications Privacy Act in Chapter
52 121 (commencing with Section 2701) of Part I of Title 18 of the United
53 States Code Annotated and shall be authorized to issue orders as
54 provided by federal law.

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

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

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

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

- 14 (a) A designated or described place or premises;
15 (b) A designated or described vehicle, as that term is defined in
16 section 10.00 of the penal law;
17 (c) A designated or described person[~~+~~];
18 (d) A designated or described electronic communication service or
19 remote computing service.

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

22 § 690.20 Search warrants; where executable.

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

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

30 (i) any company, corporation or entity which is headquartered or oper-
31 ates within the state of New York; or

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

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

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

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

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

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

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

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

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

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

38 3. Notwithstanding any provision of subdivision one of this section, a
39 search warrant that is issued pursuant to paragraph (a) of subdivision
40 one of section 690.20 of this article is deemed executed for purposes of
41 this article at the time that service is made upon the electronic commu-
42 nication service or remote computing service entity pursuant to para-
43 graph (b) or (c) of subdivision one of section 690.20 of this article.

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

54 5. The provision of records by a company or entity in response to a
55 search warrant that is issued pursuant to subdivision one of section
56 690.20 of this article shall produce all records responsive to such

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

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

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

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

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

23 § 496.06 Public corruption.

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

30 2. A "specified offense" is an offense defined by any of the following
31 provisions of this chapter: section 155.25 (petit larceny); section
32 155.30 (grand larceny in the fourth degree); section 155.35 (grand
33 larceny in the third degree); section 155.40 (grand larceny in the
34 second degree); section 155.42 (grand larceny in the first degree);
35 section 190.60 (scheme to defraud in the [~~second~~ **fifth** degree); **section**
36 **190.62 (scheme to defraud in the fourth degree); section 190.63 (scheme**
37 **to defraud in the third degree); section 190.64 (scheme to defraud in**
38 **the second degree);** or section 190.65 (scheme to defraud in the first
39 degree).

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

43 § 190.77 Offenses involving theft of identity; definitions.

44 1. For the purposes of sections 190.78, 190.79, 190.80 [~~and~~],
45 190.80-a, **190.80-b, 190.80-c** and 190.85 of this article "personal iden-
46 tifying information" means a person's name, address, telephone number,
47 date of birth, driver's license number, social security number, place of
48 employment, mother's maiden name, financial services account number or
49 code, savings account number or code, checking account number or code,
50 brokerage account number or code, credit card account number or code,
51 debit card number or code, automated teller machine number or code,
52 taxpayer identification number, computer system password, signature or
53 copy of a signature, electronic signature, unique biometric data that is
54 a fingerprint, voice print, retinal image or iris image of another
55 person, telephone calling card number, mobile identification number or
56 code, electronic serial number or personal identification number, or any

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

4 2. For the purposes of sections 190.78, 190.79, 190.80, 190.80-a,
5 190.80-b, 190.80-c, 190.81, 190.82 and 190.83 of this article:

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

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

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

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

22 2. he or she has been previously convicted within the last five years
23 of identity theft in the third degree as defined in section [~~190.78~~]
24 190.80, identity theft in the second degree as defined in section
25 [~~190.79~~] 190.80-a, identity theft in the first degree as defined in
26 section [~~190.80~~] 190.80-b, unlawful possession of personal identifica-
27 tion information in the third degree as defined in section 190.81,
28 unlawful possession of personal identification information in the second
29 degree as defined in section 190.82, unlawful possession of personal
30 identification information in the first degree as defined in this
31 section, [~~unlawful~~] criminal possession of a skimmer device in the
32 second degree as defined in section 190.85, [~~unlawful~~] criminal
33 possession of a skimmer device in the first degree as defined in section
34 190.86, grand larceny in the fourth degree as defined in section 155.30,
35 grand larceny in the third degree as defined in section 155.35, grand
36 larceny in the second degree as defined in section 155.40 or grand
37 larceny in the first degree as defined in section 155.42 of this chap-
38 ter; or

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

42 (s) Identity theft in the second degree, as defined in section
43 [~~190.79~~] 190.80-a of the penal law, identity theft in the first degree,
44 as defined in section [~~190.80~~] 190.80-b of the penal law, unlawful
45 possession of personal identification information in the second degree,
46 as defined in section 190.82 of the penal law, and unlawful possession
47 of personal identification information in the first degree, as defined
48 in section 190.83 of the penal law.

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

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

1 theft in the second degree as defined in section [~~190.79~~] 190.80-a,
2 identity theft in the first degree as defined in section [~~190.80~~]
3 190.80-b, unlawful possession of personal identification information in
4 the second degree as defined in section 190.82, unlawful possession of
5 personal identification information in the first degree as defined in
6 section 190.83, money laundering in support of terrorism in the fourth
7 degree as defined in section 470.21, money laundering in support of
8 terrorism in the third degree as defined in section 470.22, money laun-
9 dering in support of terrorism in the second degree as defined in
10 section 470.23, money laundering in support of terrorism in the first
11 degree as defined in section 470.24 of this chapter, and includes an
12 attempt or conspiracy to commit any such offense.

13 § 38. Subdivision 1 and paragraph (b) of subdivision 4 of section
14 60.27 of the penal law, subdivision 1 as amended by chapter 279 of the
15 laws of 2008, and paragraph (b) of subdivision 4 as amended by chapter
16 313 of the laws of 2011, are amended to read as follows:

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

49 (b) the term "victim" shall include the victim of the offense, the
50 representative of a crime victim as defined in subdivision six of
51 section six hundred twenty-one of the executive law, an individual whose
52 identity was assumed or whose personal identifying information was used
53 in violation of section 190.78, 190.79 [~~ex~~], 190.80, 190.80-a or
54 190.80-b of this chapter, or any person who has suffered a financial
55 loss as a direct result of the acts of a defendant in violation of
56 section 190.78, 190.79, 190.80, 190.80-a, 190.80-b, 190.82 or 190.83 of

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

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

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