

IN SENATE

S.

Senate

58

IN SENATE--Introduced by Sen

(at the request of the Attorney General)

--read twice and ordered printed,
and when printed to be committed
to the Committee on

----- A.
Assembly

IN ASSEMBLY--Introduced by M. of A.

(at the request of the Attorney General)

with M. of A. as co-sponsors

--read once and referred to the
Committee on

PENALA
(Increases penalties for crimes
committed with the aid of a comput-
er)

Pen L. computer crimes

AN ACT

to amend the penal law, in relation
to computer crimes

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

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship
of this proposal

#55 Alessi	#02 Flanagan	#40 Leibell	#17 Oppenheimer	#09 Skelos
#20 Andrews	#08 Puschillo	#52 Libous	#11 Padavan	#10 Smith, A.
#07 Balboni	#22 Golden	#45 Little	#21 Parker	#14 Smith, M.
#42 Bonacic	#33 Gonzalez	#15 Maltese	#30 Paterson	#35 Spano
#46 Breslin	#06 Hannon	#05 Marcellino	#61 Rath	#58 Stachowski
#60 Brown	#16 Hassall-	#24 Marchi	#56 Robach	#16 Stavisky
#43 Bruno	Thompson	#62 Masiara	#13 Sabini	#03 Trunco
#25 Connor	#04 Johnson	#57 McGee	#41 Saland	#49 Valasky
#50 DeFrancisco	#14 Klein	#47 Maier	#19 Sampson	#59 Volker
#32 Diaz	#26 Krueger	#18 Montgomery	#23 Savino	#51 Winner
#17 Dilan	#27 Kruger	#38 Morahan	#31 Schneiderman	#48 Wright
#29 Duane	#39 Larkin	#54 Nozzolo	#28 Serrano	
#44 Farley	#01 LaValle	#12 Onorato	#51 Seward	

IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the
multi-sponsorship of this proposal:

a049 Abbate	a010 Conte	a148 Hayes	a022 Meng	a080 Rivera, N.
a001 Acampora	a032 Cook	a083 Heastie	a102 Miller	a076 Rivera, P.
a021 Alfano	a107 Crouch	a048 Mikind	a052 Millman	a056 Robinson
a084 Arroyo	a063 Cusick	a127 Hooker	a060 Mirones	a012 Seledino
a118 Aubertine	a045 Cymbrowitz	a018 Hooper	a132 Morelle	a074 Sanders
a035 Aubry	a138 DelMonte	a144 Hoyt	a093 Masiello	a113 Sayward
a136 Becalles	a116 Destito	a062 Ignazio	a139 Weabitt	a029 Scarborough
a124 Barclay	a086 Diaz, L.	a042 Jacobs	a037 Nolan	a140 Schiminger
a014 Barra	a085 Diaz, R.	a131 John	a043 Norman	a145 Schroeder
a008 Barrage	a016 DiNapoli	a095 Karben	a128 Oaks	a122 Scorsafava
a092 Benedetto	a081 Dinowitz	a100 Kirwan	a017 O'Connell	a059 Seddio
a079 Benjamin	a003 Eddington	a129 Kolb	a069 O'Donnell	a038 Seminaric
a073 Bing	a004 Englebright	a135 Koch	a137 O'Mara	a064 Silver
a055 Boyland	a130 Errigo	a034 Lafayette	a051 Ortis	a099 Stephens
a089 Bradley	a072 Espalliat	a091 Latimer	a114 Orloff	a067 Stringer
a044 Brennan	a071 Farrell	a061 Lavelle	a150 Parment	a011 Sweeney
a092 Brodsky	a015 Parrara	a013 Lavine	a088 Paulin	a110 Tedisco
a121 Brown	a005 Fields	a050 Lentol	a141 Peoples	a002 Thiele
a147 Burling	a123 Finch	a125 Liftan	a039 Peraita	a031 Titus
a117 Butler	a007 Fitzpatrick	a053 Lopez	a058 Perry	a143 Tokasz
a101 Cahill	a090 Galef	a126 Lupardo	a023 Pheffer	a105 Tonko
a096 Calboun	a133 Gantt	a111 Nagge	a068 Powell	a054 Towns
a106 Canestrari	a036 Gianaris	a120 Magarelli	a087 Prellow	a115 Townsend
a026 Carrozza	a066 Glick	a103 Manning	a146 Quinn	a041 Weinstein
a108 Casale	a040 Gordon	a030 Markey	a097 Rabbitt	a020 Weisenberg
a119 Christensen	a075 Gottfried	a027 Meyersohn	a009 Raia	a024 Weprin
a033 Clark	a065 Grannis	a112 McDonald	a006 Ramos	a142 Wirth
a046 Cohen, A.	a057 Green	a019 McDonough	a134 Reilich	a070 Wright
a028 Cohen, M.	a077 Greene	a104 McEneany	a109 Reilly	a149 Young
a047 Colton	a098 Gunther	a025 McLaughlin	a078 Rivera, J.	a094 Zabrowski

1) Single House Bill (introduced and printed separately in either or both
houses). Uni-Bill (introduced simultaneously in both houses and printed as one
bill. Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2 signed
copies of bill and 4 copies of memorandum in support (single house); or 4 signed
copies of bill and 8 copies of memorandum in support (uni-bill).

1 Section 1. The penal law is amended by adding two new sections 156.40
2 and 156.41 to read as follows:

3 § 156.40 Criminal use of encryption in the second degree.

4 A person is guilty of criminal use of encryption in the second degree
5 when he or she intentionally uses or attempts to use encryption to:

6 1. commit, further, facilitate or promote conduct constituting a
7 crime;

8 2. conceal the commission of any crime;

9 3. conceal or protect the identity of a person who has committed any
10 crime; or

11 4. prevent, impede, delay or disrupt the normal operation or use of a
12 computer, computer program or computer system.

13 Criminal use of encryption in the second degree is a class A misdemea-
14 nor.

15 § 156.41 Criminal use of encryption in the first degree.

16 A person is guilty of criminal use of encryption in the first degree
17 when he or she commits the crime of criminal use of encryption in the
18 second degree and he or she:

19 1. does so with an intent to commit or attempt to commit or further
20 the commission of a felony;

21 2. does so with an intent to conceal the commission of any felony;

22 3. does so with the intent to protect the identity of a person who has
23 committed any felony; or

24 4. has been previously convicted of any crime under this article.

25 Criminal use of encryption in the first degree is a class E felony.

26 § 2. Subdivision 6 of section 156.00 of the penal law, as added by
27 chapter 514 of the laws of 1986, is amended to read as follows:

1 6. "Uses a computer or computer service without authorization" means
2 the use of a computer or computer service without the permission of, or
3 in excess of the permission of, the owner or lessor or someone licensed
4 or privileged by the owner or lessor [after notice to that effect to the
5 user of the computer or computer service has been given by:

6 (a) giving actual notice in writing or orally to the user; or

7 (b) prominently posting written notice adjacent to the computer being
8 utilized by the user; or

9 (c) a notice that is displayed on, printed out on or announced by the
10 computer being utilized by the user. Proof that the computer is
11 programmed to automatically display, print or announce such notice or a
12 notice prohibiting copying, reproduction or duplication shall be
13 presumptive evidence that such notice was displayed, printed or
14 announced].

15 § 3. Section 156.00 of the penal law is amended by adding a new subdivi-
16 sion 8 to read as follows:

17 8. "Encryption" means any protective or disruptive measure, including,
18 without limitation, cryptography, enciphering or encoding, which:

19 (a) causes or makes any data, information, image, program, signal or
20 sound unintelligible or unusable; or

21 (b) prevents, impedes, delays or disrupts access to any data, informa-
22 tion, image, program, signal or sound.

23 § 4. Section 215.35 of the penal law is amended to read as follows:

24 § 215.35 Tampering with physical evidence; definitions of terms.

25 The following definitions are applicable to section 215.40:

26 1. "Physical evidence" means any article, object, document, record,
27 property of any kind, or other thing of physical substance [which is or
28 is about to be produced or used as evidence in an official proceeding],

1 including but not limited to computer programs, computer data and
2 computer services as defined in section 156.00 of this chapter.

3 2. "Official proceeding" means any action or proceeding, investigation
4 or inquiry conducted by or before a legally constituted judicial, legis-
5 lative, administrative or other governmental agency or official, in
6 which evidence may properly be received or gathered.

7 3. "Encryption" means any protective or disruptive measure, including
8 but not limited to cryptography, enciphering or encoding, which: (a)
9 causes or makes any data, information, image, program, signal or sound
10 unintelligible or unusable; or (b) prevents, impedes, delays or disrupts
11 access to any data, information, image, program, signal or sound.

12 § 5. Section 215.40 of the penal law is amended to read as follows:

13 § 215.40 Tampering with physical evidence.

14 A person is guilty of tampering with physical evidence when:

15 1. With intent that it be used or introduced in, or believing that it
16 has been requested or may be gathered during or pursuant to an official
17 proceeding or a prospective official proceeding, [he] such person: (a)
18 knowingly makes, devises or prepares false physical evidence, or (b)
19 produces or offers such evidence at such a proceeding knowing it to be
20 false; or

21 2. Believing that certain physical evidence [is about to] has been or
22 may be requested, gathered, produced or used in or pursuant to an offi-
23 cial proceeding or a prospective official proceeding, and intending to
24 prevent such production or use, [he] such person suppresses it by any
25 act of concealment, alteration, encryption or destruction, or by employ-
26 ing force, intimidation or deception against any person.

27 3. No electronic communications service or remote computing service,
28 as defined under the federal electronic communications privacy act,

1 which is acting within the ordinary course of business, shall be obli-
2 gated to retain customer information and/or content unless in receipt of
3 an official request to retain physical evidence.

4 Tampering with physical evidence is a class [E] D felony.

5 § 6. Paragraph (c) of subdivision 5 of section 156.00 of the penal
6 law, as added by chapter 514 of the laws of 1986, is amended and a new
7 paragraph (d) is added to read as follows:

8 (c) is not and is not intended to be available to anyone other than
9 the person or persons rightfully in possession thereof or selected
10 persons having access thereto with his or their consent and which
11 accords or may accord such rightful possessors an advantage over compet-
12 itors or other persons who do not have knowledge or the benefit there-
13 of[.]; or

14 (d) contains records of the employment, salary, credit or other finan-
15 cial or personal information relating to another person and such records
16 are accessed after the time at which a person knows or reasonably should
17 know that he or she is without authorization to view the information
18 displayed.

19 § 7. Subdivisions 1 and 2 of section 156.10 of the penal law, as added
20 by chapter 514 of the laws of 1986, are amended to read as follows:

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

23 2. he thereby knowingly gains access to computer material[.]; or

24 § 8. Section 156.10 of the penal law is amended by adding a new subdivi-
25 sion 3 to read as follows:

26 3. he gains access to such computer or computer service by using a
27 card, code or other means of access, or any combination thereof, that he
28 knows to be forged or stolen, or through use of a fictitious identity.

1 § 9. The opening paragraph of section 156.20 of the penal law, as
2 amended by chapter 89 of the laws of 1993, is amended to read as
3 follows:

4 A person is guilty of computer tampering in the fourth degree when he
5 uses or causes to be used a computer or computer service and having no
6 right to do so he intentionally alters in any manner or destroys,
7 damages or conceals computer data or a computer program of another
8 person.

9 § 10. Subdivisions 3 and 4 of section 156.25 of the penal law, as
10 amended by chapter 89 of the laws of 1993, are amended to read as
11 follows:

12 3. he intentionally alters in any manner or destroys, damages or
13 conceals computer material; or

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

17 § 11. The opening paragraph of section 156.26 of the penal law, as
18 added by chapter 89 of the laws of 1993, is amended to read as follows:

19 A person is guilty of computer tampering in the second degree when he
20 commits the crime of computer tampering in the fourth degree and he: (1)
21 intentionally alters in any manner or destroys, damages or conceals
22 computer data or a computer program so as to cause damages in an aggre-
23 gate amount exceeding three thousand dollars; or (2) does so with the
24 intent to endanger public safety, including, but not limited to, inter-
25 rupting or impairing the providing of services by any public or private
26 utility or by any state, county or local governmental agency, public
27 carrier or public communication service.

1 § 12. The opening paragraph of section 156.27 of the penal law, as
2 added by chapter 89 of the laws of 1993, is amended to read as follows:

3 A person is guilty of computer tampering in the first degree when he
4 commits the crime of computer tampering in the fourth degree and he
5 intentionally alters in any manner or destroys, damages or conceals
6 computer data or a computer program so as to cause damages in an aggre-
7 gate amount exceeding fifty thousand dollars.

8 § 13. Subdivision 2 of section 115.00 of the penal law, as added by
9 chapter 422 of the laws of 1978, is amended to read as follows:

10 2. to a person under sixteen years of age who intends to engage in
11 conduct which would constitute a crime, he, being over eighteen years of
12 age, engages in conduct which provides such person with means or oppor-
13 tunity for the commission thereof and which in fact aids such person to
14 commit a crime[.]; or

15 § 14. Section 115.00 of the penal law is amended by adding a new
16 subdivision 3 to read as follows:

17 3. to a person who intends to commit a crime, he engages in conduct
18 which includes the intentional disclosure of a computer password, iden-
19 tifying code, personal information number, or other confidential infor-
20 mation about a computer security system which provides such person with
21 means or opportunity for the commission thereof and in fact aids such
22 person to commit a crime.

23 § 15. Paragraph (a) of subdivision 1 of section 460.10 of the penal
24 law, as amended by chapter 489 of the laws of 2000, is amended to read
25 as follows:

26 (a) Any of the felonies set forth in this chapter: sections 120.05,
27 120.10 and 120.11 relating to assault; sections 125.10 to 125.27 relat-
28 ing to homicide; sections 130.25, 130.30 and 130.35 relating to rape;

1 sections 135.20 and 135.25 relating to kidnapping; section 135.65 relat-
2 ing to coercion; sections 140.20, 140.25 and 140.30 relating to
3 burglary; sections 145.05, 145.10 and 145.12 relating to criminal
4 mischief; article one hundred fifty relating to arson; sections 155.30,
5 155.35, 155.40 and 155.42 relating to grand larceny; section 156.10
6 relating to computer trespass, sections 156.25, 156.26 and 156.27 relat-
7 ing to computer tampering, section 156.30 relating to unlawful dupli-
8 cation of computer related material, section 156.35 relating to criminal
9 possession of computer related material, section 156.41 relating to
10 criminal use of encryption, article one hundred sixty relating to
11 robbery; sections 165.45, 165.50, 165.52 and 165.54 relating to criminal
12 possession of stolen property; sections 170.10, 170.15, 170.25, 170.30,
13 170.40, 170.65 and 170.70 relating to forgery; sections 175.10, 175.25,
14 175.35, 175.40 and 210.40 relating to false statements; sections 176.15,
15 176.20, 176.25 and 176.30 relating to insurance fraud; sections 178.20
16 and 178.25 relating to criminal diversion of prescription medications
17 and prescriptions; sections 180.03, 180.08, 180.15, 180.25, 180.40,
18 180.45, 200.00, 200.03, 200.04, 200.10, 200.11, 200.12, 200.20, 200.22,
19 200.25, 200.27, 215.00, 215.05 and 215.19 relating to bribery; sections
20 190.40 and 190.42 relating to criminal usury; section 190.65 relating to
21 schemes to defraud; sections 205.60 and 205.65 relating to hindering
22 prosecution; sections 210.10, 210.15, and 215.51 relating to perjury and
23 contempt; section 215.40 relating to tampering with physical evidence;
24 sections 220.06, 220.09, 220.16, 220.18, 220.21, 220.31, 220.34, 220.39,
25 220.41, 220.43, 220.46, 220.55 and 220.60 relating to controlled
26 substances; sections 225.10 and 225.20 relating to gambling; sections
27 230.25, 230.30, and 230.32 relating to promoting prostitution; sections
28 235.06, 235.07 and 235.21 relating to obscenity; [section] sections

1 263.05, 263.10, 263.11, 263.15 and 263.16 relating to [promoting an
2 obscene] sexual performance by a child; sections 265.02, 265.03, 265.04,
3 265.11, 265.12, 265.13 and the provisions of section 265.10 which
4 constitute a felony relating to firearms and other dangerous weapons;
5 and sections 265.14 and 265.16 relating to criminal sale of a firearm;
6 and section 275.10, 275.20, 275.30, or 275.40 relating to unauthorized
7 recordings; and sections 470.05, 470.10, 470.15 and 470.20 relating to
8 money laundering; or
9 § 16. This act shall take effect on the first of November next
10 succeeding the date on which it shall have become a law.