

NJ Electronic Crime Statutes

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2A:38A-1. Definitions

As used in this act:

a. "Access" means to instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a **computer**, **computer** system, or **computer** network.

b. "**Computer**" means an electronic device or another similar device capable of executing a **computer** program, including arithmetic, logic, memory or input-output operations, by the manipulation of electronic or magnetic impulses and includes all **computer** equipment connected to such a device in a **computer** system or network.

c. "**Computer** equipment" means any equipment or devices including all input, output, processing, storage, software, or communications facilities, intended to interface with the **computer**.

d. "**Computer** network" means the interconnection of communication lines, including microwave or other means of electronic communications, with a **computer** through remote terminals, or a complex consisting of two or more interconnected computers.

e. "**Computer** program" means a series of instructions or statements executable on a **computer** which directs the **computer** system in a manner to produce a desired result.

f. "**Computer** software" means a set of **computer** programs, data, procedures, and associated documentation concerned with the operation of a **computer** system.

g. "**Computer** system" means a set of interconnected **computer** equipment intended to operate as a cohesive system.

h. "Data" means information, facts, concepts, or instructions prepared for use in a **computer**, **computer** system, or **computer** network.

i. "Data base" means a collection of data.

j. "Financial instrument" includes but is not limited to a check, draft, warrant, money order, note, certificate of deposit, letter of credit, bill of exchange, credit or debit card, transaction authorization mechanism, marketable security and any **computer** representation of these items.

k. "Property" includes but is not limited to financial instruments, information, data, and **computer** software in either human readable or **computer** readable form, copies or originals, and any other tangible or intangible item of value.

1 . "Services" includes but is not limited to the use of a **computer** system, **computer** network, **computer** programs, data prepared for **computer** use and data contained within a **computer** system or **computer** network.

L.1984, c. 182, s. 1.

2A:38A-2. Value of property or services

For the purposes of this act, the value of any property or services, including the use of **computer** time, shall be their fair market value if it is determined that a willing buyer and willing seller exist. Alternatively, value shall include but not be limited to the cost of generating or obtaining data and storing it within a **computer** or **computer** system.

L.1984, c. 182, s. 2.

2A:38A-3. Computer -related offenses; compensatory and punitive damages; costs and expenses

A person or enterprise damaged in business or property as a result of any of the following actions may sue the actor therefor in the Superior Court and may recover compensatory and punitive damages and the cost of the suit including a reasonable attorney's fee, costs of investigation and litigation:

a. The purposeful or knowing, and unauthorized altering, damaging, taking or destruction of any data, data base, **computer** program, **computer** software or **computer** equipment existing internally or externally to a **computer**, **computer** system or **computer** network;

b. The purposeful or knowing, and unauthorized altering, damaging, taking or destroying of a **computer**, **computer** system or **computer** network;

c. The purposeful or knowing, and unauthorized accessing or attempt to access any **computer**, **computer** system or **computer** network;

d. The purposeful or knowing, and unauthorized altering, accessing, tampering with, obtaining, intercepting, damaging or destroying of a financial instrument; or

e. The purposeful or knowing accessing and reckless altering, damaging, destroying or obtaining of any data, data base, **computer**, **computer** program, **computer** software, **computer** equipment, **computer** system or **computer** network.

L.1984, c. 182, s. 3.

2A:38A-4. Value of loss; finding of fact

The value of damage, loss, property or income involved in any lawsuit shall be determined by the trier of fact.

L.1984, c. 182, s. 4.

2A:38A-5. Injunctions

In addition to any other action or proceeding authorized by law, the Attorney General, or a person or enterprise alleging injury or loss may bring an action in Superior Court to enjoin actions causing damage as described in this act or to enjoin any acts in furtherance thereof.

L.1984, c. 182, s. 5.

2A:38A-6. Venue of action

Actions brought under this act may be filed in the Superior Court of the county in which the **computer** which is accessed is located, or where the terminal used in the accessing is situated, or where the actual damage occurs.

L.1984, c. 182, s. 6.

2C:20-1

2C:20-1.1. Offense involving access device; presumption of unlawful purpose

6. In any prosecution for an offense enumerated in chapter 20 of Title 2C of the New Jersey Statutes involving a defaced access device, any removal, erasure, defacement, alteration, destruction, covering or other change in such access device from its original configuration performed by any person other than an authorized manufacturer of, or service provider to access devices shall be presumed to be for an unlawful purpose.

L.1997,c.6,s.6.

2C:20-2(b)(2)(K)

(k) The property stolen consists of an access device or a defaced access device.

2C:20-8. Theft of services

2C:20-8. Theft of Services.

a. A person is guilty of theft if he purposely obtains services which he knows are available only for compensation, by deception or threat, or by false token, slug, or other means, including but not limited to mechanical or electronic devices or through fraudulent statements, to avoid payment for the service. "Services" include labor or professional service; transportation, telephone, telecommunications, electric, water, gas, cable television, or other public service; accommodation in hotels, restaurants or elsewhere; entertainment; admission to exhibitions; use of vehicles or other movable property. Where compensation for service is ordinarily paid immediately upon the rendering of such service, as in the case of hotels and restaurants, absconding without payment or offer to pay gives rise to a presumption that the service was obtained by deception as to intention to pay.

b. A person commits theft if, having control over the disposition of services of another, to which he is not entitled, he knowingly diverts such services to his own benefit

or to the benefit of another not entitled thereto.

c. Any person who, without permission and for the purpose of obtaining electric current, gas or water with intent to defraud any vendor of electricity, gas or water or a person who is furnished by a vendor with electric current, gas or water:

(1) Connects or causes to be connected by wire or any other device with the wires, cables or conductors of any such vendor or any other person; or

(2) Connects or disconnects the meters, pipes or conduits of such vendor or any other person or in any other manner tampers or interferes with such meters, pipes or conduits, or connects with such meters, pipes or conduits by pipes, conduits or other instruments--is guilty of a disorderly persons offense.

The existence of any of the conditions with reference to meters, pipes, conduits or attachments, described in this subsection, is presumptive evidence that the person to whom gas, electricity or water is at the time being furnished by or through such meters, pipes, conduits or attachments has, with intent to defraud, created or caused to be created with reference to such meters, pipes, conduits or attachments, the condition so existing; provided, however, that the presumption shall not apply to any person so furnished with gas, electricity or water for less than 31 days or until there has been at least one meter reading.

A violation of this subsection shall be deemed to be a continuing offense as long as the conditions described in this subsection exist.

d. Any person who, without permission or authority, connects or causes to be connected by wires or other devices, any meter erected or set up for the purpose of registering or recording the amount of electric current supplied to any customer by any vendor of electricity within this State, or changes or shunts the wiring leading to or from any such meter, or by any device, appliance or means whatsoever tampers with any such meter so that the meter will not measure or record the full amount of electric current supplied to such customer, is guilty of a disorderly persons offense.

The existence of any of the conditions with reference to meters or attachments described in this subsection is presumptive evidence that the person to whom electricity is at the time being furnished by or through such meters or attachments has, with intent to defraud, created or caused to be created with reference to such meters or attachments, the condition so existing; provided, however, that the presumption shall not apply to any person so furnished with electricity for less than 31 days or until there has been at least one meter reading.

A violation of this subsection shall be deemed to be a continuing offense as long as the conditions described in this subsection exist.

e. Any person who, with intent to obtain cable television service without payment,

in whole or in part, of the lawful charges therefor, or with intent to deprive another of the lawful receipt of such service, damages, cuts, tampers with, installs, taps or makes any connection with, or who displaces, removes, injures or destroys any wire, cable, conduit, apparatus or equipment of a cable television company operating a CATV system; or who, without authority of a cable television company, intentionally prevents, obstructs or delays, by any means or contrivance, the sending, transmission, conveyance, distribution or receipt of programming material carried by equipment of the cable television company operating a CATV system, is a disorderly person.

The existence of any of the conditions with reference to wires, cables, conduits, apparatus or equipment described in this subsection is presumptive evidence that the person to whom cable television service is at the time being furnished has, with intent to obtain cable television service without authorization or compensation or to otherwise defraud, created or caused to be created the condition so existing.

f. Any person who purposely or knowingly manufactures, constructs, sells, offers for sale, distributes or installs any equipment, device or instrument designed or intended to facilitate the interception, decoding or receipt of any cable television service with intent to obtain such service and avoid the lawful payment of the charges therefor to the provider, in whole or in part, is a disorderly person.

Any communications paraphernalia prohibited under this subsection shall be subject to forfeiture and may be seized by the State or any law enforcement officer in accordance with the provisions of N.J.S.2C:64-1 et seq.

g. Any person who purposely or knowingly maintains or possesses any equipment, device or instrument of the type described in subsection f. of this section or maintains or possesses any equipment, device or instrument actually used to facilitate the interception, decoding or receipt of any cable television service with intent to obtain such service and avoid the lawful payment, in whole or in part, of the charges therefor to the provider, is a disorderly person.

Any communications paraphernalia prohibited under this subsection shall be subject to forfeiture and may be seized by the State or any law enforcement officer in accordance with the provisions of N.J.S.2C:64-1 et seq.

h. Any person who, with the intent of depriving a telephone company of its lawful charges therefor, purposely or knowingly makes use of any telecommunications service by means of the unauthorized use of any electronic or mechanical device or connection, or by the unauthorized use of billing information, or by the use of a computer, computer equipment or computer software, or by the use of misidentifying or misleading information given to a representative of the telephone company is guilty of a crime of the third degree.

The existence of any of the conditions with reference to electronic or mechanical devices, computers, computer equipment or computer software described in this

subsection is presumptive evidence that the person to whom telecommunications service is at the time being furnished has, with intent to obtain telecommunications service without authorization or compensation or to otherwise defraud, created or caused to be created the condition so existing.

i. Any person who purposely or knowingly manufactures, constructs, sells, offers for sale, distributes, installs, or otherwise provides any service, equipment, device, computer, computer equipment, computer software or instrument designed or intended to facilitate the receipt of any telecommunications service and avoid the lawful payment of the charges therefor to the provider, in whole or in part, is guilty of a crime of the third degree.

Any communications paraphernalia, computer, computer equipment or computer software prohibited under this subsection shall be subject to forfeiture and may be seized by the State or any law enforcement officer in accordance with the provisions of N.J.S.2C:64-1 et seq.

j. Any person who purposely or knowingly maintains or possesses any equipment, device, computer, computer equipment, computer software or instrument of the type described in subsection i. of this section, or maintains or possesses any equipment, device, computer, computer equipment, computer software or instrument actually used to facilitate the receipt of any telecommunications service with intent to obtain such service and avoid the lawful payment, in whole or in part, of the charges therefor to the provider, is guilty of a crime of the third degree.

Any communications paraphernalia, computer, computer equipment or computer software prohibited under this subsection shall be subject to forfeiture and may be seized by the State or any law enforcement officer in accordance with the provisions of N.J.S.2C:64-1 et seq.

k. In addition to any other disposition authorized by law, and notwithstanding the provisions of N.J.S.2C:43-3, every person who violates this section shall be sentenced to make restitution to the vendor and to pay a minimum fine of \$500.00 for each offense. In determining the amount of restitution, the court shall consider the costs expended by the vendor, including but not limited to the repair and replacement of damaged equipment, the cost of the services unlawfully obtained, investigation expenses, and attorney fees.

l. The presumptions of evidence applicable to offenses defined in subsections c., d., e. and h. of this section shall also apply in any prosecution for theft of services brought pursuant to the provisions of subsection a. or b. of this section.

Amended 1983, c.15, s.1; 1985, c.10; 1989, c.112; 1997, c.6, s.4.

2C:20-23 Definitions.

2. As used in this act:

a. "Access" means to instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a computer, computer storage medium, computer system, or computer network.

b. "Computer" means an electronic, magnetic, optical, electrochemical or other high speed data processing device or another similar device capable of executing a computer program, including arithmetic, logic, memory, data storage or input-output operations and includes all computer equipment connected to such a device, computer system or computer network, but shall not include an automated typewriter or typesetter or a portable, hand-held calculator.

c. "Computer equipment" means any equipment or devices, including all input, output, processing, storage, software, or communications facilities, intended to interface with the computer.

d. "Computer network" means the interconnection of communication lines, including microwave or other means of electronic communications, with a computer through remote terminals, or a complex consisting of two or more interconnected computers, and shall include the Internet.

e. "Computer program" means a series of instructions or statements executable on a computer, which directs the computer system in a manner to produce a desired result.

f. "Computer software" means a set of computer programs, data, procedures, and associated documentation concerned with the operation of a computer system.

g. "Computer system" means a set of interconnected computer equipment intended to operate as a cohesive system.

h. "Data" means information, facts, concepts, or instructions contained in a computer, computer storage medium, computer system, or computer network. It shall also include, but not be limited to, any alphanumeric, hexadecimal, octal or binary code.

i. "Data base" means a collection of data.

j. "Financial instrument" includes but is not limited to a check, draft, warrant, money order, note, certificate of deposit, letter of credit, bill of exchange, credit or debit card, transaction authorization mechanism, marketable security and any computer representation of these items.

k. "Services" includes but is not limited to the use of a computer system, computer network, computer programs, data prepared for computer use and data contained within a computer system or computer network.

l. "Personal identifying information" shall have the meaning set forth in subsection a. of N.J.S.2C:21-17, and shall also include passwords and other codes that permit access to any data, data base, computer, computer storage medium, computer program, computer software, computer equipment, computer system or computer network, where access is intended to be secure, restricted or limited.

m. "Internet" means the international computer network of both federal and non-federal interoperable packet switched data networks.

n. "Alter," "damage" or "destroy" shall include, but not be limited to, any change or impairment to the integrity or availability of any data or other information, data base, computer program, computer software, computer equipment, computer, computer storage medium, computer system, or computer network by any means including introduction of a computer contaminant.

o. "User of computer services" shall include, but not be limited to, any person, business, computer, computer network, computer system, computer equipment or any other device which makes use of any resources of a computer, computer network, computer system, computer storage medium, computer equipment, data or data base.

p. "Computer contaminant" means any set of computer instructions that are designed to alter, damage, destroy, record or transmit information within a computer, computer system or computer network without the authorization of the owner of the information. They include, but are not limited to, a group of computer instructions commonly called viruses or worms, that are self-replicating or self-propagating and are designed to contaminate other computer programs or computer data, consume computer resources, alter, damage, destroy, record or transmit data or in some other fashion usurp the normal operation of the computer, computer program, computer operations, computer services or computer network.

q. "Authorization" means permission, authority or consent given by a person who possesses lawful authority to grant such permission, authority or consent to another person to access, operate, use, obtain, take, copy, alter, damage or destroy a computer, computer network, computer system, computer equipment, computer software, computer program, computer storage medium, or data. An actor has authorization if a reasonable person would believe that the act was authorized.

L.1984,c.184,s.2; amended 2003, c.39, s.1.

2C:20-24 Value of property or services; additional measures.

3. For the purposes of this act, the value of any property or services, including the use of computer time, shall be their fair market value, if it is determined that a willing buyer and willing seller exist. Value shall include the cost of repair or remediation of any damage caused by an unlawful act and the gross revenue from any lost business

opportunity caused by the unlawful act. The value of any lost business opportunity may be determined by comparison to gross revenue generated before the unlawful act that resulted in the lost business opportunity. Value shall include, but not be limited to, the cost of generating or obtaining data and storing it within a computer or computer system.

L.1984,c.184,s.3; amended 2003, c.39, s.2.

2C:20-25 Computer criminal activity; degree of crime; sentencing.

4. A person is guilty of computer criminal activity if the person purposely or knowingly and without authorization, or in excess of authorization:
 - a. Accesses any data, data base, computer storage medium, computer program, computer software, computer equipment, computer, computer system or computer network;
 - b. Alters, damages or destroys any data, data base, computer, computer storage medium, computer program, computer software, computer system or computer network, or denies, disrupts or impairs computer services, including access to any part of the Internet, that are available to any other user of the computer services;
 - c. Accesses or attempts to access any data, data base, computer, computer storage medium, computer program, computer software, computer equipment, computer system or computer network for the purpose of executing a scheme to defraud, or to obtain services, property, personal identifying information, or money, from the owner of a computer or any third party;
 - d. (Deleted by amendment, P.L.2003, c.39).
 - e. Obtains, takes, copies or uses any data, data base, computer program, computer software, personal identifying information, or other information stored in a computer, computer network, computer system, computer equipment or computer storage medium; or
 - f. Accesses and recklessly alters, damages or destroys any data, data base, computer, computer storage medium, computer program, computer software, computer equipment, computer system or computer network.
 - g. A violation of subsection a. of this section is a crime of the third degree. A violation of subsection b. is a crime of the second degree. A violation of subsection c. is a crime of the third degree, except that it is a crime of the second degree if the value of the services, property, personal identifying information, or money obtained or sought to be obtained exceeds \$5,000. A violation of subsection e. is a crime of the third degree, except that it is a crime of the second degree if the data, data base, computer program, computer software, or information:

- (1) is or contains personal identifying information, medical diagnoses, treatments or other medical information concerning an identifiable person;
- (2) is or contains governmental records or other information that is protected from disclosure by law, court order or rule of court; or
- (3) has a value exceeding \$5,000.

A violation of subsection f. is a crime of the fourth degree, except that it is a crime of the third degree if the value of the damage exceeds \$5,000.

A violation of any subsection of this section is a crime of the first degree if the offense results in:

- (1) a substantial interruption or impairment of public communication, transportation, supply of water, gas or power, or other public service. The term "substantial interruption or impairment" shall mean such interruption or impairment that:
 - (a) affects 10 or more structures or habitations;
 - (b) lasts for two or more hours; or
 - (c) creates a risk of death or significant bodily injury to any person;
- (2) damages or loss in excess of \$250,000; or
- (3) significant bodily injury to any person.

Every sentence of imprisonment for a crime of the first degree committed in violation of this section shall include a minimum term of one-third to one-half of the sentence imposed, during which term the defendant shall not be eligible for parole.

h. Every sentence imposed upon a conviction pursuant to this section shall, if the victim is a government agency, include a period of imprisonment. The period of imprisonment shall include a minimum term of one-third to one-half of the sentence imposed, during which term the defendant shall not be eligible for parole. The victim shall be deemed to be a government agency if a computer, computer network, computer storage medium, computer system, computer equipment, computer program, computer software, computer data or data base that is a subject of the crime is owned, operated or maintained by or on behalf of a governmental agency or unit of State or local government or a public authority. The defendant shall be strictly liable under this subsection and it shall not be a defense that the defendant did not know or intend that the victim was a government agency, or that the defendant intended that there be other victims of the crime.

A violation of any subsection of this section shall be a distinct offense from a

violation of any other subsection of this section, and a conviction for a violation of any subsection of this section shall not merge with a conviction for a violation of any other subsection of this section or section 10 of P.L.1984, c.184 (C.2C:20-31), or for conspiring or attempting to violate any subsection of this section or section 10 of P.L.1984, c.184 (C.2C:20-31), and a separate sentence shall be imposed for each such conviction.

When a violation of any subsection of this section involves an offense committed against a person under 18 years of age, the violation shall constitute an aggravating circumstance to be considered by the court when determining the appropriate sentence to be imposed.

L.1984,c.184,s.4; amended 2003, c.39, s.3.

2C:20-31 Wrongful access, disclosure of information; degree of crime; sentencing.

10. a. A person is guilty of a crime of the third degree if the person purposely or knowingly and without authorization, or in excess of authorization, accesses any data, data base, computer, computer storage medium, computer software, computer equipment, computer system and knowingly or recklessly discloses or causes to be disclosed any data, data base, computer software, computer programs or personal identifying information.

b. A person is guilty of a crime of the second degree if the person purposely or knowingly and without authorization, or in excess of authorization, accesses any data, data base, computer, computer storage medium, computer software, computer equipment, computer system or computer network and purposely or knowingly discloses or causes to be disclosed any data, data base, computer software, computer program or other information that is protected from disclosure by any law, court order or rule of court. Every sentence imposed upon a conviction pursuant to this subsection shall include a period of imprisonment. The period of imprisonment shall include a minimum term of one-third to one-half of the sentence imposed, during which term the defendant shall not be eligible for parole.

L.1984,c.184,s.10; amended 2003, c.39, s.4.

2C:20-33 Obtaining, copying, accessing program, software valued at \$1,000 or less.

12. It is an affirmative defense to a prosecution pursuant to subsection e. of section 4 of P.L.1984, c.184 (C.2C:20-25), which shall be proved by clear and convincing evidence, that the actor obtained, copied or accessed a computer program or computer software that had a retail value of less than \$1,000 and the actor did not disseminate or disclose the program or software to any other person.

L.1984,c.184,s.12; amended 2003, c.39, s.5.

2C:20-34 Situs of offense, determination.

13. For the purpose of prosecution under this act, and in addition to determining the situs of the offense pursuant to the provisions of N.J.S.2C:1-3, the situs of an offense of computer criminal activity shall also be the location of the computer, computer storage medium, computer program, computer software, computer equipment, computer system or computer network which is accessed, or where the computer, computer storage medium, computer program, computer software, computer equipment, computer system, computer network or other device used in the offense is situated, or where the actual damage occurs.

L.1984,c.184,s.13; amended 2003, c.39, s.6.