

CHAPTER 39

AN ACT concerning computer crime, amending and repealing certain sections of P.L.1984, c.184 and amending N.J.S.2C:20-2 and P.L.1982, c.77.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 2 of P.L.1984, c.184 (C.2C:20-23) is amended to read as follows:

C.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.

2. Section 3 of P.L.1984, c.184 (C.2C:20-24) is amended to read as follows:

C.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.

3. Section 4 of P.L.1984, c.184 (C.2C:20-25) is amended to read as follows:

C.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.

4. Section 10 of P.L.1984, c.184 (C.2C:20-31) is amended to read as follows:

C.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.

5. Section 12 of P.L.1984, c.184 (C.2C:20-33) is amended to read as follows:

C.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.

6. Section 13 of P.L.1984, c.184 (C.2C:20-34) is amended to read as follows:

C.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.

7. N.J.S.2C:20-2 is amended to read as follows:

Consolidation of theft offenses; grading; provisions applicable to theft generally.

2C:20-2. Consolidation of Theft Offenses; Grading; Provisions Applicable to Theft Generally.

a. Consolidation of Theft and Computer Criminal Activity Offenses. Conduct denominated theft or computer criminal activity in this chapter constitutes a single offense, but each episode or transaction may be the subject of a separate prosecution and conviction. A charge of theft or computer criminal activity may be supported by evidence that it was committed in any manner that would be theft or computer criminal activity under this chapter, notwithstanding the specification of a different manner in the indictment or accusation, subject only to the power of the court to ensure fair trial by granting a bill of particulars, discovery, a continuance, or other appropriate relief where the conduct of the defense would be prejudiced by lack of fair notice or by surprise.

b. Grading of theft offenses.

(1) Theft constitutes a crime of the second degree if:

(a) The amount involved is \$75,000.00 or more;

(b) The property is taken by extortion;

(c) The property stolen is a controlled dangerous substance or controlled substance analog as defined in N.J.S.2C:35-2 and the quantity is in excess of one kilogram;

(d) The property stolen is a person's benefits under federal or State law, or from any other source, which the Department of Human Services or an agency acting on its behalf has budgeted for the person's health care and the amount involved is \$75,000 or more; or

(e) The property stolen is human remains or any part thereof.

(2) Theft constitutes a crime of the third degree if:

(a) The amount involved exceeds \$500.00 but is less than \$75,000.00;

(b) The property stolen is a firearm, motor vehicle, vessel, boat, horse, domestic companion animal or airplane;

(c) The property stolen is a controlled dangerous substance or controlled substance analog as defined in N.J.S.2C:35-2 and the amount involved is less than \$75,000.00 or is undetermined and the quantity is one kilogram or less;

(d) It is from the person of the victim;

(e) It is in breach of an obligation by a person in his capacity as a fiduciary;

- (f) It is by threat not amounting to extortion;
 - (g) It is of a public record, writing or instrument kept, filed or deposited according to law with or in the keeping of any public office or public servant;
 - (h) The property stolen is a person's benefits under federal or State law, or from any other source, which the Department of Human Services or an agency acting on its behalf has budgeted for the person's health care and the amount involved is less than \$75,000;
 - (i) The property stolen is any real or personal property related to, necessary for, or derived from research, regardless of value, including, but not limited to, any sample, specimens and components thereof, research subject, including any warm-blooded or cold-blooded animals being used for research or intended for use in research, supplies, records, data or test results, prototypes or equipment, as well as any proprietary information or other type of information related to research;
 - (j) The property stolen is a New Jersey Prescription Blank as referred to in R.S.45:14-14;
or
 - (k) The property stolen consists of an access device or a defaced access device.
- (3) Theft constitutes a crime of the fourth degree if the amount involved is at least \$200.00 but does not exceed \$500.00. If the amount involved was less than \$200.00 the offense constitutes a disorderly persons offense.
- (4) The amount involved in a theft or computer criminal activity shall be determined by the trier of fact. The amount shall include, but shall not be limited to, the amount of any State tax avoided, evaded or otherwise unpaid, improperly retained or disposed of. Amounts involved in thefts or computer criminal activities committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be aggregated in determining the grade of the offense.
- c. Claim of right. It is an affirmative defense to prosecution for theft that the actor:
 - (1) Was unaware that the property or service was that of another;
 - (2) Acted under an honest claim of right to the property or service involved or that he had a right to acquire or dispose of it as he did; or
 - (3) Took property exposed for sale, intending to purchase and pay for it promptly, or reasonably believing that the owner, if present, would have consented.
 - d. Theft from spouse. It is no defense that theft or computer criminal activity was from or committed against the actor's spouse, except that misappropriation of household and personal effects, or other property normally accessible to both spouses, is theft or computer criminal activity only if it occurs after the parties have ceased living together.

8. Section 7 of P.L.1982, c.77 (C.2A:4A-26) is amended to read as follows:

C.2A:4A-26 Referral to another court without juvenile's consent.

- 7. Referral to another court without juvenile's consent.
 - a. On motion of the prosecutor, the court shall, without the consent of the juvenile, waive jurisdiction over a case and refer that case from the Superior Court, Chancery Division, Family Part to the appropriate court and prosecuting authority having jurisdiction if it finds, after hearing, that:
 - (1) The juvenile was 14 years of age or older at the time of the charged delinquent act; and
 - (2) There is probable cause to believe that the juvenile committed a delinquent act or acts which if committed by an adult would constitute:
 - (a) Criminal homicide other than death by auto, strict liability for drug induced deaths, pursuant to N.J.S.2C:35-9, robbery which would constitute a crime of the first degree, carjacking, aggravated sexual assault, sexual assault, aggravated assault which would constitute a crime of the second degree, kidnapping or aggravated arson; or
 - (b) A crime committed at a time when the juvenile had previously been adjudicated delinquent, or convicted, on the basis of any of the offenses enumerated in subsection a.(2)(a);
or
 - (c) A crime committed at a time when the juvenile had previously been sentenced and confined in an adult penal institution; or

(d) An offense against a person committed in an aggressive, violent and willful manner, other than an offense enumerated in subsection a.(2)(a) of this section, or the unlawful possession of a firearm, destructive device or other prohibited weapon, arson or death by auto if the juvenile was operating the vehicle under the influence of an intoxicating liquor, narcotic, hallucinogenic or habit producing drug; or

(e) A violation of N.J.S.2C:35-3, N.J.S.2C:35-4, or N.J.S.2C:35-5; or

(f) Crimes which are a part of a continuing criminal activity in concert with two or more persons and the circumstances of the crimes show the juvenile has knowingly devoted himself to criminal activity as a source of livelihood; or

(g) An attempt or conspiracy to commit any of the acts enumerated in paragraph (a), (d) or (e) of this subsection; or

(h) Theft of an automobile pursuant to chapter 20 of Title 2C of the New Jersey Statutes; or

(i) Possession of a firearm with a purpose to use it unlawfully against the person of another under subsection a. of N.J.S.2C:39-4, or the crime of aggravated assault, aggravated criminal sexual contact, burglary or escape if, while in the course of committing or attempting to commit the crime including the immediate flight therefrom, the juvenile possessed a firearm; or

(j) Computer criminal activity which would be a crime of the first or second degree pursuant to section 4 or section 10 of P.L.1984. c.184 (C.2C:20-25 or C.2C:20-31); and

(3) Except with respect to any of the acts enumerated in subparagraph (a), (i) or (j) of paragraph (2) of subsection a. of this section, or with respect to any acts enumerated in subparagraph (e) of paragraph (2) of subsection a. of this section which involve the distribution for pecuniary gain of any controlled dangerous substance or controlled substance analog while on any property used for school purposes which is owned by or leased to any school or school board, or within 1,000 feet of such school property or while on any school bus, or any attempt or conspiracy to commit any of those acts, the State has shown that the nature and circumstances of the charge or the prior record of the juvenile are sufficiently serious that the interests of the public require waiver.

b. (Deleted by amendment, P.L.1999, c.373).

c. An order referring a case shall incorporate therein not only the alleged act or acts upon which the referral is premised, but also all other delinquent acts arising out of or related to the same transaction.

d. A motion seeking waiver shall be filed by the prosecutor within 30 days of receipt of the complaint. This time limit shall not, except for good cause shown, be extended.

e. If the juvenile can show that the probability of his rehabilitation by the use of the procedures, services and facilities available to the court prior to the juvenile reaching the age of 19 substantially outweighs the reasons for waiver, waiver shall not be granted. This subsection shall not apply with respect to a juvenile 16 years of age or older who is charged with committing any of the acts enumerated in subparagraph (a), (i) or (j) of paragraph (2) of subsection a. of this section or with respect to a violation of N.J.S.2C:35-3, N.J.S.2C:35-4 or section 1 of P.L.1998, c.26 (C.2C:39-4.1).

f. The Attorney General shall develop for dissemination to the county prosecutors those guidelines or directives deemed necessary or appropriate to ensure the uniform application of this section throughout the State.

Repealer.

9. Sections 5 through 9 and section 11 of P.L.1984, c.184 (C.2C:20-26 to 2C:20-30, inclusive, and 2C:20-32) are hereby repealed.

10. This act shall take effect immediately.

Approved April 14, 2003.