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No

**HEARINGS:**

No

**NEWSPAPER ARTICLES:**

No

P.L. 2003, CHAPTER 39, *approved April 14, 2003*  
Senate, No. 1355 (*First Reprint*)

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

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. Section 2 of P.L.1984, c.184 (C.2C:20-23) is amended to read  
9 as follows.

10 2. As used in this act:

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

15 b. "Computer" means an electronic, magnetic, optical,  
16 electrochemical or other high speed data processing device or another  
17 similar device capable of executing a computer program, including  
18 arithmetic, logic, memory, data storage or input-output operations[,  
19 by the manipulation of electronic or magnetic impulses] and includes  
20 all computer equipment connected to such a device [in a], computer  
21 system or computer network, but shall not include an automated  
22 typewriter or typesetter or a portable, hand-held calculator.

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

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

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

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

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

39 h. "Data" means information, facts, concepts, or instructions  
40 [prepared for use] contained in a computer, computer storage

**EXPLANATION** - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Senate SJU committee amendments adopted June 13, 2002.

1 medium, computer system, or computer network. It shall also include,  
2 but not be limited to, any alphanumeric, hexadecimal, octal or binary  
3 code.

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

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

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

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

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

22 n. "Alter," "damage" or "destroy" shall include, but not be limited  
23 to, any change or impairment to the integrity or availability of any data  
24 or other information, data base, computer program, computer  
25 software, computer equipment, computer, computer storage medium,  
26 computer system, or computer network <sup>1</sup>by any means including  
27 introduction of a computer contaminant<sup>1</sup>.

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

33 <sup>1</sup>p. "Computer contaminant" means any set of computer instructions  
34 that are designed to alter, damage, destroy, record or transmit  
35 information within a computer, computer system or computer network  
36 without the authorization of the owner of the information. They  
37 include, but are not limited to, a group of computer instructions  
38 commonly called viruses or worms, that are self-replicating or self-  
39 propagating and are designed to contaminate other computer programs  
40 or computer data, consume computer resources, alter, damage,  
41 destroy, record or transmit data or in some other fashion usurp the  
42 normal operation of the computer, computer program, computer  
43 operations, computer services or computer network.<sup>1</sup>

44 <sup>1</sup>q. "Authorization" means permission, authority or consent given  
45 by a person who possesses lawful authority to grant such permission,  
46 authority or consent to another person to access, operate, use, obtain,

1 take, copy, alter, damage or destroy a computer, computer network,  
2 computer system, computer equipment, computer software, computer  
3 program, computer storage medium, or data. An actor has  
4 authorization if a reasonable person would believe that the act was  
5 authorized.<sup>1</sup>

6 (cf: P.L.1984, c.184, s.2)

7

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

10 3. For the purposes of this act, the value of any property or  
11 services, including the use of computer time, shall be their fair market  
12 value, if it is determined that a willing buyer and willing seller exist.  
13 **[Alternatively, value]** Value shall include the cost of repair or  
14 remediation of any damage caused by an unlawful act and the gross  
15 revenue from any lost business opportunity caused by the unlawful act.  
16 The value of any lost business opportunity may be determined by  
17 comparison to gross revenue generated before the unlawful act that  
18 resulted in the lost business opportunity. Value shall include, but not  
19 be limited to, the cost of generating or obtaining data and storing it  
20 within a computer or computer system.

21 (cf: P.L.1984, c.184, s.3)

22

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

25 4. A person is guilty of **[theft]** computer criminal activity if **[he]**  
26 the person purposely or knowingly and without authorization, or in  
27 excess of authorization:

28 a. **[Alters, damages, takes or destroys]** Accesses any data, data  
29 base, computer storage medium, computer program, computer  
30 software **[or],** computer equipment **[existing internally or externally**  
31 **to a computer],** computer, computer system or computer network;

32 b. Alters, damages**[, takes]** or destroys **[a]** any data, data base,  
33 computer, computer storage medium, computer program, computer  
34 software, computer system or computer network, or denies, disrupts  
35 or impairs computer services, including access to any part of the  
36 Internet, that are available to any other user of the computer services;

37 c. Accesses or attempts to access any data, data base, computer,  
38 computer storage medium, computer program, computer software,  
39 computer equipment, computer system or computer network for the  
40 purpose of executing a scheme to defraud, or to obtain services,  
41 property, personal identifying information, or money, from the owner  
42 of a computer or any third party; **[or]**

43 d. **[Alters, tampers with, obtains, intercepts, damages or destroys**  
44 **a financial instrument]** **(Deleted by amendment, P.L. , c. ).**

45 e. Obtains, takes, copies or uses any data, data base, computer

1 program, computer software, personal identifying information, or  
2 other information stored in a computer, computer network, computer  
3 system, computer equipment or computer storage medium; or

4 f. Accesses and recklessly alters, damages or destroys any data,  
5 data base, computer, computer storage medium, computer program,  
6 computer software, computer equipment, computer system or  
7 computer network.

8 g. A violation of subsection a. of this section is a crime of the third  
9 degree. A violation of subsection b. is a crime of the second degree.  
10 A violation of subsection c. is a crime of the third degree, except that  
11 it is a crime of the second degree if the value of the services, property,  
12 personal identifying information, or money obtained or sought to be  
13 obtained exceeds \$5,000. A violation of subsection e. is a crime of the  
14 third degree, except that it is a crime of the second degree if the data,  
15 data base, computer program, computer software, or information:

16 (1) is or contains personal identifying information, medical  
17 diagnoses, treatments or other medical information concerning an  
18 identifiable person;

19 (2) is or contains governmental records or other information that  
20 is protected from disclosure by law, court order or rule of court; or

21 (3) has a value exceeding \$5,000.

22 A violation of subsection f. is a crime of the fourth degree, except  
23 that it is a crime of the third degree if the value of the damage exceeds  
24 \$5,000.

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

27 (1) a substantial interruption or impairment of public  
28 communication, transportation, supply of water, gas or power, or  
29 other public service. The term “substantial interruption or  
30 impairment” shall mean such interruption or impairment that:

31 (a) affects 10 or more structures or habitations;

32 (b) lasts for two or more hours; or

33 (c) creates a risk of death or significant bodily injury to any person;

34 (2) damages or loss in excess of \$250,000; or

35 (3) significant bodily injury to any person.

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

40 h. Every sentence imposed upon a conviction pursuant to this  
41 section shall, if the victim is a government agency, include a period of  
42 imprisonment. The period of imprisonment shall include a minimum  
43 term of one-third to one-half of the sentence imposed, during which  
44 term the defendant shall not be eligible for parole. The victim shall be  
45 deemed to be a government agency if a computer, computer network,  
46 computer storage medium, computer system, computer equipment,

1 computer program, computer software, computer data or data base  
2 that is a subject of the crime is owned, operated or maintained by or  
3 on behalf of a governmental agency or unit of State or local  
4 government or a public authority. The defendant shall be strictly liable  
5 under this subsection and it shall not be a defense that the defendant  
6 did not know or intend that the victim was a government agency, or  
7 that the defendant intended that there be other victims of the crime.

8 A violation of any subsection of this section shall be a distinct  
9 offense from a violation of any other subsection of this section, and a  
10 conviction for a violation of any subsection of this section shall not  
11 merge with a conviction for a violation of any other subsection of this  
12 section or section 10 of P.L.1984, c.184 (C.2C:20-31), or for  
13 conspiring or attempting to violate any subsection of this section or  
14 section 10 of P.L.1984, c.184 (C.2C:20-31), and a separate sentence  
15 shall be imposed for each such conviction.

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

21 (cf: P.L.1984, c.184, s.4)

22  
23 4. Section 10 of P.L.1984, c.184 (C.2C:20-31) is amended to read  
24 as follows:

25 10. a. A person is guilty of a crime of the third degree if [he] the  
26 person purposely or knowingly and without authorization, or in excess  
27 of authorization, accesses [a] any data, data base, computer,  
28 computer storage medium, computer software, computer equipment,  
29 computer system [or any of its parts] and [directly or indirectly,]  
30 knowingly or recklessly discloses or causes to be disclosed any data,  
31 data base, computer software [or], computer programs[, where the  
32 accessing and disclosing cannot be assessed a monetary value or loss]  
33 or personal identifying information.

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

46 (cf: P.L.1984, c.184, s.10)

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

3       12. [The copying or altering of a computer program or computer  
4 software shall not constitute theft for the purposes of chapters 20 and  
5 21 of Title 2C of the New Jersey Statutes or any offense under this  
6 act, if the computer program or computer software is of a retail value  
7 of \$1,000.00 or less and is not copied for resale.]

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

15 (cf: P.L.1984, c.184, s.12)

16

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

19       13. For the purpose of prosecution under this act, and in addition  
20 to determining the situs of the offense pursuant to the provisions of  
21 N.J.S.2C:1-3, the situs of an offense of [theft] computer criminal  
22 activity shall also be the location of the computer, computer  
23 storagemedium, computer program, computer software, computer  
24 equipment, computer system or computer network which is accessed,  
25 or where the [terminal] computer, computer storage medium,  
26 computer program, computer software, computer equipment,  
27 computer system, computer network or other device used in the  
28 offense is situated, or where the actual damage occurs.

29 (cf: P.L.1984, c.184, s.13)

30

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

32       2C:20-2. Consolidation of Theft Offenses; Grading; Provisions  
33 Applicable to Theft Generally.

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

46       b. Grading of theft offenses.



- 1 (1) Theft constitutes a crime of the second degree if:
- 2 (a) The amount involved is \$75,000.00 or more;
- 3 (b) The property is taken by extortion;
- 4 (c) The property stolen is a controlled dangerous substance or  
5 controlled substance analog as defined in N.J.S.2C:35-2 and the  
6 quantity is in excess of one kilogram;
- 7 (d) The property stolen is a person's benefits under federal or State  
8 law, or from any other source, which the Department of Human  
9 Services or an agency acting on its behalf has budgeted for the  
10 person's health care and the amount involved is \$75,000 or more; or
- 11 (e) The property stolen is human remains or any part thereof.
- 12 (2) Theft constitutes a crime of the third degree if:
- 13 (a) The amount involved exceeds \$500.00 but is less than  
14 \$75,000.00;
- 15 (b) The property stolen is a firearm, motor vehicle, vessel, boat,  
16 horse, domestic companion animal or airplane;
- 17 (c) The property stolen is a controlled dangerous substance or  
18 controlled substance analog as defined in N.J.S.2C:35-2 and the  
19 amount involved is less than \$75,000.00 or is undetermined and the  
20 quantity is one kilogram or less;
- 21 (d) It is from the person of the victim;
- 22 (e) It is in breach of an obligation by a person in his capacity as a  
23 fiduciary;
- 24 (f) It is by threat not amounting to extortion;
- 25 (g) It is of a public record, writing or instrument kept, filed or  
26 deposited according to law with or in the keeping of any public office  
27 or public servant;
- 28 (h) The property stolen is a person's benefits under federal or State  
29 law, or from any other source, which the Department of Human  
30 Services or an agency acting on its behalf has budgeted for the  
31 person's health care and the amount involved is less than \$75,000;
- 32 (i) The property stolen is any real or personal property related to,  
33 necessary for, or derived from research, regardless of value, including,  
34 but not limited to, any sample, specimens and components thereof,  
35 research subject, including any warm-blooded or cold-blooded animals  
36 being used for research or intended for use in research, supplies,  
37 records, data or test results, prototypes or equipment, as well as any  
38 proprietary information or other type of information related to  
39 research;
- 40 (j) The property stolen is a New Jersey Prescription Blank as  
41 referred to in R.S.45:14-14; or
- 42 (k) The property stolen consists of an access device or a defaced  
43 access device.
- 44 (3) Theft constitutes a crime of the fourth degree if the amount  
45 involved is at least \$200.00 but does not exceed \$500.00. If the  
46 amount involved was less than \$200.00 the offense constitutes a

1 disorderly persons offense.

2 (4) The amount involved in a theft or computer criminal activity  
3 shall be determined by the trier of fact. The amount shall include, but  
4 shall not be limited to, the amount of any State tax avoided, evaded or  
5 otherwise unpaid, improperly retained or disposed of. Amounts  
6 involved in thefts or computer criminal activities committed pursuant  
7 to one scheme or course of conduct, whether from the same person or  
8 several persons, may be aggregated in determining the grade of the  
9 offense.

10 c. Claim of right. It is an affirmative defense to prosecution for  
11 theft that the actor:

12 (1) Was unaware that the property or service was that of another;

13 (2) Acted under an honest claim of right to the property or service  
14 involved or that he had a right to acquire or dispose of it as he did; or

15 (3) Took property exposed for sale, intending to purchase and pay  
16 for it promptly, or reasonably believing that the owner, if present,  
17 would have consented.

18 d. Theft from spouse. It is no defense that theft or computer  
19 criminal activity was from or committed against the actor's spouse,  
20 except that misappropriation of household and personal effects, or  
21 other property normally accessible to both spouses, is theft or  
22 computer criminal activity only if it occurs after the parties have  
23 ceased living together.

24 (cf: P.L.1999, c.95, s.2)

25

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

28 7. Referral to another court without juvenile's consent.

29 a. On motion of the prosecutor, the court shall, without the  
30 consent of the juvenile, waive jurisdiction over a case and refer that  
31 case from the Superior Court, Chancery Division, Family Part to the  
32 appropriate court and prosecuting authority having jurisdiction if it  
33 finds, after hearing, that:

34 (1) The juvenile was 14 years of age or older at the time of the  
35 charged delinquent act; and

36 (2) There is probable cause to believe that the juvenile committed  
37 a delinquent act or acts which if committed by an adult would  
38 constitute:

39 (a) Criminal homicide other than death by auto, strict liability for  
40 drug induced deaths, pursuant to N.J.S.2C:35-9, robbery which would  
41 constitute a crime of the first degree, carjacking, aggravated sexual  
42 assault, sexual assault, aggravated assault which would constitute a  
43 crime of the second degree, kidnapping or aggravated arson; or

44 (b) A crime committed at a time when the juvenile had previously  
45 been adjudicated delinquent, or convicted, on the basis of any of the  
46 offenses enumerated in subsection a.(2)(a); or

- 1 (c) A crime committed at a time when the juvenile had previously  
2 been sentenced and confined in an adult penal institution; or
- 3 (d) An offense against a person committed in an aggressive, violent  
4 and willful manner, other than an offense enumerated in subsection  
5 a.(2)(a) of this section, or the unlawful possession of a firearm,  
6 destructive device or other prohibited weapon, arson or death by auto  
7 if the juvenile was operating the vehicle under the influence of an  
8 intoxicating liquor, narcotic, hallucinogenic or habit producing drug;  
9 or
- 10 (e) A violation of N.J.S.2C:35-3, N.J.S.2C:35-4, or N.J.S.2C:35-5;  
11 or
- 12 (f) Crimes which are a part of a continuing criminal activity in  
13 concert with two or more persons and the circumstances of the crimes  
14 show the juvenile has knowingly devoted himself to criminal activity  
15 as a source of livelihood; or
- 16 (g) An attempt or conspiracy to commit any of the acts enumerated  
17 in paragraph (a), (d) or (e) of this subsection; or
- 18 (h) Theft of an automobile pursuant to chapter 20 of Title 2C of  
19 the New Jersey Statutes; or
- 20 (i) Possession of a firearm with a purpose to use it unlawfully  
21 against the person of another under subsection a. of N.J.S.2C:39-4, or  
22 the crime of aggravated assault, aggravated criminal sexual contact,  
23 burglary or escape if, while in the course of committing or attempting  
24 to commit the crime including the immediate flight therefrom, the  
25 juvenile possessed a firearm; or
- 26 (j) Computer criminal activity which would be a crime of the first  
27 or second degree pursuant to section 4 or section 10 of P.L.1984.  
28 c.184 (C.2C:20-25 or C.2C:20-31); and
- 29 (3) Except with respect to any of the acts enumerated in  
30 subparagraph (a) [~~or~~], (i) or (j) of paragraph (2) of subsection a. of  
31 this section, or with respect to any acts enumerated in subparagraph  
32 (e) of paragraph (2) of subsection a. of this section which involve the  
33 distribution for pecuniary gain of any controlled dangerous substance  
34 or controlled substance analog while on any property used for school  
35 purposes which is owned by or leased to any school or school board,  
36 or within 1,000 feet of such school property or while on any school  
37 bus, or any attempt or conspiracy to commit any of those acts, the  
38 State has shown that the nature and circumstances of the charge or the  
39 prior record of the juvenile are sufficiently serious that the interests of  
40 the public require waiver.
- 41 b. (Deleted by amendment, P.L.1999, c.373).
- 42 c. An order referring a case shall incorporate therein not only the  
43 alleged act or acts upon which the referral is premised, but also all  
44 other delinquent acts arising out of or related to the same transaction.
- 45 d. A motion seeking waiver shall be filed by the prosecutor within  
46 30 days of receipt of the complaint. This time limit shall not, except

1 for good cause shown, be extended.

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

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

15 (cf: P.L.1999, c.373)

16

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

20

21 10. This act shall take effect immediately.

22

23

24

25

26 Revises New Jersey's computer crime law to incorporate recent  
27 technological changes.

**SENATE, No. 1355**

**STATE OF NEW JERSEY**  
**210th LEGISLATURE**

INTRODUCED MARCH 25, 2002

**Sponsored by:**

**Senator RICHARD H. BAGGER**

**District 21 (Essex, Morris, Somerset and Union)**

**SYNOPSIS**

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**CURRENT VERSION OF TEXT**

As introduced.



S1355 BAGGER

2

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S1355 BAGGER

- 1 i. "Data base" means a collection of data.
- 2 j. "Financial instrument" includes but is not limited to a check,  
3 draft, warrant, money order, note, certificate of deposit, letter of credit,  
4 bill of exchange, credit or debit card, transaction authorization  
5 mechanism, marketable security and any computer representation of  
6 these items.
- 7 k. "Services" includes but is not limited to the use of a computer  
8 system, computer network, computer programs, data prepared for  
9 computer use and data contained within a computer system or  
10 computer network.
- 11 l. "Personal identifying information" shall have the meaning set  
12 forth in subsection a. of N.J.S.2C:21-17, and shall also include  
13 passwords and other codes that permit access to any data, data base,  
14 computer, computer storage medium, computer program, computer  
15 software, computer equipment, computer system or computer network,  
16 where access is intended to be secure, restricted or limited.
- 17 m. "Internet" means the international computer network of both  
18 federal and non-federal interoperable packet switched data networks.
- 19 n. "Alter," "damage" or "destroy" shall include, but not be limited  
20 to, any change or impairment to the integrity or availability of any data  
21 or other information, data base, computer program, computer software,  
22 computer equipment, computer, computer storage medium, computer  
23 system, or computer network.
- 24 o. "User of computer services" shall include, but not be limited to,  
25 any person, business, computer, computer network, computer system,  
26 computer equipment or any other device which makes use of any  
27 resources of a computer, computer network, computer system,  
28 computer storage medium, computer equipment, data or data base.  
29 (cf: P.L.1984, c.184, s.2)

30

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

- 33 3. For the purposes of this act, the value of any property or services,  
34 including the use of computer time, shall be their fair market value, if  
35 it is determined that a willing buyer and willing seller exist.  
36 **[Alternatively, value]** Value shall include the cost of repair or  
37 remediation of any damage caused by an unlawful act and the gross  
38 revenue from any lost business opportunity caused by the unlawful act.  
39 The value of any lost business opportunity may be determined by  
40 comparison to gross revenue generated before the unlawful act that  
41 resulted in the lost business opportunity. Value shall include, but not  
42 be limited to, the cost of generating or obtaining data and storing it  
43 within a computer or computer system.  
44 (cf: P.L.1984, c.184, s.3)

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

3 4. A person is guilty of [~~theft~~] computer criminal activity if [~~he~~]  
4 the person purposely or knowingly and without authorization, or in  
5 excess of authorization:

6 a. [~~Alters, damages, takes or destroys~~] Accesses any data, data base,  
7 computer storage medium, computer program, computer software [~~or~~],  
8 computer equipment [~~existing internally or externally to a computer~~],  
9 computer, computer system or computer network;

10 b. Alters, damages[, takes] or destroys [~~a~~] any data, data base,  
11 computer, computer storage medium, computer program, computer  
12 software, computer system or computer network, or denies, disrupts or  
13 impairs computer services, including access to any part of the Internet,  
14 that are available to any other user of the computer services;

15 c. Accesses or attempts to access any data, data base, computer,  
16 computer storage medium, computer program, computer software,  
17 computer equipment, computer system or computer network for the  
18 purpose of executing a scheme to defraud, or to obtain services,  
19 property, personal identifying information, or money, from the owner  
20 of a computer or any third party; [~~or~~]

21 d. [~~Alters, tampers with, obtains, intercepts, damages or destroys a~~  
22 ~~financial instrument~~] (~~Deleted by amendment, P.L. , c. .~~).

23 e. Obtains, takes, copies or uses any data, data base, computer  
24 program, computer software, personal identifying information, or other  
25 information stored in a computer, computer network, computer system,  
26 computer equipment or computer storage medium; or

27 f. Accesses and recklessly alters, damages or destroys any data, data  
28 base, computer, computer storage medium, computer program,  
29 computer software, computer equipment, computer system or computer  
30 network.

31 g. A violation of subsection a. of this section is a crime of the third  
32 degree. A violation of subsection b. is a crime of the second degree.  
33 A violation of subsection c. is a crime of the third degree, except that  
34 it is a crime of the second degree if the value of the services, property,  
35 personal identifying information, or money obtained or sought to be  
36 obtained exceeds \$5,000. A violation of subsection e. is a crime of the  
37 third degree, except that it is a crime of the second degree if the data,  
38 data base, computer program, computer software, or information:

39 (1) is or contains personal identifying information, medical  
40 diagnoses, treatments or other medical information concerning an  
41 identifiable person;

42 (2) is or contains governmental records or other information that is  
43 protected from disclosure by law, court order or rule of court; or

44 (3) has a value exceeding \$5,000.

45 A violation of subsection f. is a crime of the fourth degree, except  
46 that it is a crime of the third degree if the value of the damage exceeds



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1 \$5,000.

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

4 (1) a substantial interruption or impairment of public  
5 communication, transportation, supply of water, gas or power, or other  
6 public service. The term "substantial interruption or impairment" shall  
7 mean such interruption or impairment that:

8 (a) affects 10 or more structures or habitations;

9 (b) lasts for two or more hours; or

10 (c) creates a risk of death or significant bodily injury to any person;

11 (2) damages or loss in excess of \$250,000; or

12 (3) significant bodily injury to any person.

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

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

31 A violation of any subsection of this section shall be a distinct  
32 offense from a violation of any other subsection of this section, and a  
33 conviction for a violation of any subsection of this section shall not  
34 merge with a conviction for a violation of any other subsection of this  
35 section or section 10 of P.L.1984, c.184 (C.2C:20-31), or for  
36 conspiring or attempting to violate any subsection of this section or  
37 section 10 of P.L.1984, c.184 (C.2C:20-31), and a separate sentence  
38 shall be imposed for each such conviction.

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

44 (cf: P.L.1984, c.184, s.4)

45

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

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1       10. a. A person is guilty of a crime of the third degree if [he] the  
2 person purposely or knowingly and without authorization, or in excess  
3 of authorization, accesses [a] any data, data base, computer, computer  
4 storage medium, computer software, computer equipment, computer  
5 system [or any of its parts] and [directly or indirectly ,] knowingly or  
6 recklessly discloses or causes to be disclosed any data, data base,  
7 computer software [or], computer programs[,where the accessing and  
8 disclosing cannot be assessed a monetary value or loss] or personal  
9 identifying information.

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

22 (cf: P.L.1984, c.184, s.10)

23  
24       5. Section 12 of P.L.1984, c.184 (C.2C:20-33) is amended to read  
25 as follows:

26       12. [The copying or altering of a computer program or computer  
27 software shall not constitute theft for the purposes of chapters 20 and  
28 21 of Title 2C of the New Jersey Statutes or any offense under this act,  
29 if the computer program or computer software is of a retail value of  
30 \$1,000.00 or less and is not copied for resale.] It is an affirmative  
31 defense to a prosecution pursuant to subsection e. of section 4 of  
32 P.L.1984, c.184 (C.2C:20-25), which shall be proved by clear and  
33 convincing evidence, that the actor obtained, copied or accessed a  
34 computer program or computer software solely for personal use, the  
35 program or software had a retail value of less than \$1,000 and the actor  
36 did not disseminate or disclose the program or software to any other  
37 person.

38 (cf: P.L.1984, c.184, s.12)

39  
40       6. Section 13 of P.L.1984, c.184 (C.2C:20-34) is amended to read  
41 as follows:

42       13. For the purpose of prosecution under this act, and in addition  
43 to determining the situs of the offense pursuant to the provisions of  
44 N.J.S.2C:1-3, the situs of an offense of [theft] computer criminal  
45 activity shall also be the location of the computer, computer  
46 storagemedium, computer program, computer software, computer

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1 equipment, computer system or computer network which is accessed,  
2 or where the [terminal] computer, computer storage medium,  
3 computer program, computer software, computer equipment, computer  
4 system, computer network or other device used in the offense is  
5 situated, or where the actual damage occurs.

6 (cf: P.L.1984, c.184, s.13)

7

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

9 2C:20-2. Consolidation of Theft Offenses; Grading; Provisions  
10 Applicable to Theft Generally.

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

23 b. Grading of theft offenses.

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

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

26 (b) The property is taken by extortion;

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

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

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

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

36 (a) The amount involved exceeds \$500.00 but is less than  
37 \$75,000.00;

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

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

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

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

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1 (f) It is by threat not amounting to extortion;

2 (g) It is of a public record, writing or instrument kept, filed or  
3 deposited according to law with or in the keeping of any public office  
4 or public servant;

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

9 (i) The property stolen is any real or personal property related to,  
10 necessary for, or derived from research, regardless of value, including,  
11 but not limited to, any sample, specimens and components thereof,  
12 research subject, including any warm-blooded or cold-blooded animals  
13 being used for research or intended for use in research, supplies,  
14 records, data or test results, prototypes or equipment, as well as any  
15 proprietary information or other type of information related to research;

16 (j) The property stolen is a New Jersey Prescription Blank as  
17 referred to in R.S.45:14-14; or

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

20 (3) Theft constitutes a crime of the fourth degree if the amount  
21 involved is at least \$200.00 but does not exceed \$500.00. If the  
22 amount involved was less than \$200.00 the offense constitutes a  
23 disorderly persons offense.

24 (4) The amount involved in a theft or computer criminal activity  
25 shall be determined by the trier of fact. The amount shall include, but  
26 shall not be limited to, the amount of any State tax avoided, evaded or  
27 otherwise unpaid, improperly retained or disposed of. Amounts  
28 involved in thefts or computer criminal activities committed pursuant  
29 to one scheme or course of conduct, whether from the same person or  
30 several persons, may be aggregated in determining the grade of the  
31 offense.

32 c. Claim of right. It is an affirmative defense to prosecution for  
33 theft that the actor:

34 (1) Was unaware that the property or service was that of another;

35 (2) Acted under an honest claim of right to the property or service  
36 involved or that he had a right to acquire or dispose of it as he did; or

37 (3) Took property exposed for sale, intending to purchase and pay  
38 for it promptly, or reasonably believing that the owner, if present,  
39 would have consented.

40 d. Theft from spouse. It is no defense that theft or computer  
41 criminal activity was from or committed against the actor's spouse,  
42 except that misappropriation of household and personal effects, or  
43 other property normally accessible to both spouses, is theft or  
44 computer criminal activity only if it occurs after the parties have ceased  
45 living together.

46 (cf: P.L.1999, c.95, s.2)

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

3       7. Referral to another court without juvenile's consent.

4       a. On motion of the prosecutor, the court shall, without the consent  
5 of the juvenile, waive jurisdiction over a case and refer that case from  
6 the Superior Court, Chancery Division, Family Part to the appropriate  
7 court and prosecuting authority having jurisdiction if it finds, after  
8 hearing, that:

9       (1) The juvenile was 14 years of age or older at the time of the  
10 charged delinquent act; and

11       (2) There is probable cause to believe that the juvenile committed  
12 a delinquent act or acts which if committed by an adult would  
13 constitute:

14       (a) Criminal homicide other than death by auto, strict liability for  
15 drug induced deaths, pursuant to N.J.S.2C:35-9, robbery which would  
16 constitute a crime of the first degree, carjacking, aggravated sexual  
17 assault, sexual assault, aggravated assault which would constitute a  
18 crime of the second degree, kidnapping or aggravated arson; or

19       (b) A crime committed at a time when the juvenile had previously  
20 been adjudicated delinquent, or convicted, on the basis of any of the  
21 offenses enumerated in subsection a.(2)(a); or

22       (c) A crime committed at a time when the juvenile had previously  
23 been sentenced and confined in an adult penal institution; or

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

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

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

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

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

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



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11

1 the Internet, that have occurred since enactment of the computer crime  
2 law in 1984, P.L.1984, c.184(C.2C:20-23 et al.) (hereinafter the  
3 "computer law").

4 The bill amends the computer law to revise the definition of  
5 "computer" to be consistent with relevant federal law and to revise the  
6 definition of "data" to address the issue of data stored on media that are  
7 not within the computer such as removable disks and external disk  
8 drives. In addition, the bill adds definitions of the "Internet" and  
9 "personal identifying information" to section 2 of the computer law.  
10 The bill also defines the terms "alter, damage or destroy" and "user of  
11 computer services" and makes other technical clarifications.

12 The bill amends section 3 of the computer law to include as "value,"  
13 for the purpose of recovering loss, the cost of repair or remediation of  
14 any damage caused by an unlawful act and the gross revenue from a  
15 lost business opportunity attributable to that unlawful act. The bill  
16 also specifies that the value of a lost business opportunity be  
17 determined by comparison to gross revenue before the opportunity was  
18 lost.

19 Under the provisions of the bill, computer criminal activity would  
20 range from a third degree crime for access to a computer without  
21 authorization to a first degree crime where a violation results in the  
22 substantial interruption or impairment of public communication,  
23 transportation, supply of water, gas or power or other public service;  
24 or damages or loss in excess of \$250,000 or significant bodily injury  
25 to any person. The bill also provides for a mandatory minimum  
26 sentence in certain circumstances, including if a person is convicted of  
27 a crime of the first degree or if the victim is a government agency.

28 The bill clarifies that the situs of an offense related to computer  
29 criminal activity is both the location of the computer that was accessed  
30 and the location where the computer used in the offense is situated.

31 The bill provides that computer criminal activity offenses be  
32 consolidated in the same manner that theft offenses are consolidated.  
33 The substitute further provides that a juvenile who is charged with  
34 computer criminal activity that would be a crime of the first or second  
35 degree may be referred to another court without the juvenile's consent.

# SENATE JUDICIARY COMMITTEE

## STATEMENT TO

### **SENATE, No. 1355**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: JUNE 13, 2002

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 1355.

This bill would update the State law with regard to computer crime to reflect various technological changes, including the development of the Internet, that have occurred since enactment of the computer crime law in 1984, P.L.1984, c.184 (C.2C:20-23 et al.). The committee emphasizes that it is not the intent of this bill to interfere with or prohibit terms or conditions in a contract or license related to any data, data base, computer, computer storage medium, computer program, computer software, computer system, computer equipment, computer network or hardware designed to allow any of the above to operate in the ordinary course of a lawful business, or that is designed to allow an owner or authorized holder of information to protect data information or rights in it.

The bill amends N.J.S.A.2C:20-23 (section 1 of the bill) to revise the definition of "computer" to be consistent with relevant federal law and to revise the definition of "data" to address the issue of data stored on media that are not within the computer such as removable disks and external disk drives. In addition, the bill adds definitions of "Internet," "personal identifying information," "alter, damage or destroy", and "user of computer services" and makes other technical clarifications.

The bill amends N.J.S.A.2C:20-24 (section 2 of the bill) to include as "value," for the purpose of recovering loss, the cost of repair or remediation of any damage caused by an unlawful act and the gross revenue from a lost business opportunity attributable to that unlawful act. The bill also specifies that the value of a lost business opportunity be determined by comparison to gross revenue before the opportunity was lost.

Under the provisions of N.J.S.A.2C:20-25 (section 3 of the bill), computer criminal activity would range from a third degree crime for access to a computer without authorization to a first degree crime where a violation results in the substantial interruption or impairment of public communication, transportation, supply of water, gas or power or other public service; or damages or loss in excess of \$250,000 or significant bodily injury to any person. The bill also provides for a



mandatory minimum sentence in certain circumstances in subsections g. and h., including if a person is convicted of a crime of the first degree or if the victim is a government agency.

The bill clarifies that the situs of an offense related to computer criminal activity is both the location of the computer that was accessed and the location where the computer used in the offense is situated in N.J.S.A.2C:20-34 (section 6 of the bill).

The bill provides that computer criminal activity offenses may be consolidated in the same manner as theft offenses by amending N.J.S.A.2C:20-2. Note that the gradation of computer criminal activity is set forth specifically in N.J.S.A.2C:20-25 (section 3 of the bill) and may not correspond to the gradation of theft offenses as it does under existing law. The bill provides that a juvenile who is charged with first or second degree computer criminal activity may be referred to another court without the juvenile's consent by amending N.J.S.A.2A:4A-26.

The committee amendments add a definition of " authorization" to be consistent with federal law and clarify that authorized access in the ordinary course of business is not intended to be reached by the criminal provisions of the bill. See also the intent language set forth previously in paragraph 2 of this statement. The amendments expand the definition of "alter, damage or destroy" to include the introduction of a "computer contaminant" to clarify that "viruses or worms" are included. In addition, the committee amendments omit "solely for personal use" in the affirmative defense language in section 5.

ASSEMBLY TELECOMMUNICATIONS AND UTILITIES  
COMMITTEE

STATEMENT TO

[First Reprint]

**SENATE, No. 1355**

**STATE OF NEW JERSEY**

DATED: JANUARY 9, 2003

The Assembly Telecommunications and Utilities Committee reports favorably Senate Bill No. 1355 (1R).

As reported, this bill would update the State law with regard to computer crime to reflect various technological changes, including the development of the Internet, that have occurred since enactment of the computer crime law in 1984, P.L.1984, c.184 (C.2C:20-23 et al.). The committee emphasizes that it is not the intent of this bill to interfere with or prohibit terms or conditions in a contract or license related to any data, data base, computer, computer storage medium, computer program, computer software, computer system, computer equipment, computer network or hardware designed to allow any of the above to operate in the ordinary course of a lawful business, or that is designed to allow an owner or authorized holder of information to protect data information or rights in it.

The bill amends section 2 of P.L.1984, c.184 (C.2C:20-23) (section 1 of the bill) to revise the definition of "computer" to be consistent with relevant federal law and to revise the definition of "data" to address the issue of data stored on media that are not within the computer such as removable disks and external disk drives. In addition, the bill adds definitions of "Internet," "personal identifying information," "alter, damage or destroy", and "user of computer services" and makes other technical clarifications.

The bill amends section 3 of P.L.1984, c.184 (C.2C:20-24) (section 2 of the bill) to include as "value," for the purpose of recovering loss, the cost of repair or remediation of any damage caused by an unlawful act and the gross revenue from a lost business opportunity attributable to that unlawful act. The bill also specifies that the value of a lost business opportunity be determined by comparison to gross revenue before the opportunity was lost.

Under the provisions of section 4 of P.L.1984, c.184 (C.2C:20-25) (section 3 of the bill), computer criminal activity would range from a third degree crime for access to a computer without authorization to a first degree crime where a violation results in the substantial interruption or impairment of public communication, transportation,

supply of water, gas or power or other public service; or damages or loss in excess of \$250,000 or significant bodily injury to any person. The bill also provides for a mandatory minimum sentence in certain circumstances in subsections g. and h., including if a person is convicted of a crime of the first degree or if the victim is a government agency.

The bill amends section 13 of P.L.1984, c.184 (C.2C:20-34) (section 6 of the bill) to clarify that the situs of an offense related to computer criminal activity is both the location of the computer that was accessed and the location where the computer used in the offense is situated.

The bill provides that computer criminal activity offenses may be consolidated in the same manner as theft offenses by amending N.J.S.2C:20-2. Note that the gradation of computer criminal activity is set forth specifically in section 4 of P.L.1984, c.184 (C.2C:20-25) (section 3 of the bill) and may not correspond to the gradation of theft offenses as it does under existing law. The bill provides that a juvenile who is charged with first or second degree computer criminal activity may be referred to another court without the juvenile's consent by amending section 7 of P.L.1982, c.77 (C.2A:4A-26) (section 8 of the bill).

As reported, this bill is identical to Assembly Bill No. 1728, as amended by the Assembly Telecommunications and Utilities Committee.

# ASSEMBLY, No. 1728

## STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED FEBRUARY 4, 2002

**Sponsored by:**

**Assemblyman PETER J. BIONDI**

**District 16 (Morris and Somerset)**

**Assemblyman NEIL M. COHEN**

**District 20 (Union)**

**Co-Sponsored by:**

**Assemblyman Guear**

**SYNOPSIS**

Revises New Jersey's computer crime law to incorporate recent technological changes.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 1/10/2003)**

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

4

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

7

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

10 2. As used in this act:

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

15 b. "Computer" means an electronic, magnetic, optical,  
16 electrochemical or other high speed data processing device or another  
17 similar device capable of executing a computer program, including  
18 arithmetic, logic, memory, data storage or input-output operations[, by  
19 the manipulation of electronic or magnetic impulses] and includes all  
20 computer equipment connected to such a device [in a], computer  
21 system or computer network, but shall not include an automated  
22 typewriter or typesetter or a portable, hand-held calculator.

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

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

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

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

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

39 h. "Data" means information, facts, concepts, or instructions  
40 [prepared for use] contained in a computer, computer storage medium,  
41 computer system, or computer network. It shall also include, but not  
42 be limited to, any alphanumeric, hexadecimal, octal or binary code.

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

44 j. "Financial instrument" includes but is not limited to a check, draft,

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not  
enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 warrant, money order, note, certificate of deposit, letter of credit, bill  
2 of exchange, credit or debit card, transaction authorization mechanism,  
3 marketable security and any computer representation of these items.

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

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

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

16 n. "Alter," "damage" or "destroy" shall include, but not be limited  
17 to, any change or impairment to the integrity or availability of any data  
18 or other information, data base, computer program, computer software,  
19 computer equipment, computer, computer storage medium, computer  
20 system, or computer network.

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

26 (cf: P.L.1984, c.184, s.2)

27

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

30 3. For the purposes of this act, the value of any property or services,  
31 including the use of computer time, shall be their fair market value, if  
32 it is determined that a willing buyer and willing seller exist.  
33 **[Alternatively, value]** Value shall include the cost of repair or  
34 remediation of any damage caused by an unlawful act and the gross  
35 revenue from any lost business opportunity caused by the unlawful act.  
36 The value of any lost business opportunity may be determined by  
37 comparison to gross revenue generated before the unlawful act that  
38 resulted in the lost business opportunity. Value shall include, but not  
39 be limited to, the cost of generating or obtaining data and storing it  
40 within a computer or computer system.

41 (cf: P.L.1984, c.184, s.3)

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

3       4. A person is guilty of [~~theft~~] computer criminal activity if [~~he~~]  
4 the person purposely or knowingly and without authorization, or in  
5 excess of authorization:

6       a. [~~Alters, damages, takes or destroys~~] Accesses any data, data base,  
7 computer storage medium, computer program, computer software [~~or~~],  
8 computer equipment [~~existing internally or externally to a computer~~],  
9 computer, computer system or computer network;

10       b. Alters, damages[, takes] or destroys [~~a~~] any data, data base,  
11 computer, computer storage medium, computer program, computer  
12 software, computer system or computer network, or denies, disrupts or  
13 impairs computer services, including access to any part of the Internet,  
14 that are available to any other user of the computer services;

15       c. Accesses or attempts to access any data, data base, computer,  
16 computer storage medium, computer program, computer software,  
17 computer equipment, computer system or computer network for the  
18 purpose of executing a scheme to defraud, or to obtain services,  
19 property, personal identifying information, or money, from the owner  
20 of a computer or any third party; [~~or~~]

21       d. [~~Alters, tampers with, obtains, intercepts, damages or destroys a~~  
22 ~~financial instrument~~] (~~Deleted by amendment, P.L. , c. .~~).

23       e. Obtains, takes, copies or uses any data, data base, computer  
24 program, computer software, personal identifying information, or other  
25 information stored in a computer, computer network, computer system,  
26 computer equipment or computer storage medium; or

27       f. Accesses and recklessly alters, damages or destroys any data, data  
28 base, computer, computer storage medium, computer program,  
29 computer software, computer equipment, computer system or computer  
30 network.

31       g. A violation of subsection a. of this section is a crime of the third  
32 degree. A violation of subsection b. is a crime of the second degree.  
33 A violation of subsection c. is a crime of the third degree, except that  
34 it is a crime of the second degree if the value of the services, property,  
35 personal identifying information, or money obtained or sought to be  
36 obtained exceeds \$5,000. A violation of subsection e. is a crime of the  
37 third degree, except that it is a crime of the second degree if the data,  
38 data base, computer program, computer software, or information:

39       (1) is or contains personal identifying information, medical  
40 diagnoses, treatments or other medical information concerning an  
41 identifiable person;

42       (2) is or contains governmental records or other information that is  
43 protected from disclosure by law, court order or rule of court; or

44       (3) has a value exceeding \$5,000.

45       A violation of subsection f. is a crime of the fourth degree, except  
46 that it is a crime of the third degree if the value of the damage exceeds  
47 \$5,000.

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

3 (1) a substantial interruption or impairment of public  
4 communication, transportation, supply of water, gas or power, or other  
5 public service. The term "substantial interruption or impairment" shall  
6 mean such interruption or impairment that:

7 (a) affects 10 or more structures or habitations;

8 (b) lasts for two or more hours; or

9 (c) creates a risk of death or significant bodily injury to any person;

10 (2) damages or loss in excess of \$250,000; or

11 (3) significant bodily injury to any person.

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

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

30 A violation of any subsection of this section shall be a distinct  
31 offense from a violation of any other subsection of this section, and a  
32 conviction for a violation of any subsection of this section shall not  
33 merge with a conviction for a violation of any other subsection of this  
34 section or section 10 of P.L.1984, c.184 (C.2C:20-31), or for  
35 conspiring or attempting to violate any subsection of this section or  
36 section 10 of P.L.1984, c.184 (C.2C:20-31), and a separate sentence  
37 shall be imposed for each such conviction.

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

43 (cf: P.L.1984, c.184, s.4)

44

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

47 10. a. A person is guilty of a crime of the third degree if [he] the



1 person purposely or knowingly and without authorization, or in excess  
2 of authorization, accesses [a] any data, data base, computer, computer  
3 storage medium, computer software, computer equipment, computer  
4 system [or any of its parts] and [directly or indirectly ,] knowingly or  
5 recklessly discloses or causes to be disclosed any data, data base,  
6 computer software [or], computer programs[,where the accessing and  
7 disclosing cannot be assessed a monetary value or loss] or personal  
8 identifying information.

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

21 (cf: P.L.1984, c.184, s.10)

22

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

25 12. [The copying or altering of a computer program or computer  
26 software shall not constitute theft for the purposes of chapters 20 and  
27 21 of Title 2C of the New Jersey Statutes or any offense under this act,  
28 if the computer program or computer software is of a retail value of  
29 \$1,000.00 or less and is not copied for resale.] It is an affirmative  
30 defense to a prosecution pursuant to subsection e. of section 4 of  
31 P.L.1984, c.184 (C.2C:20-25), which shall be proved by clear and  
32 convincing evidence, that the actor obtained, copied or accessed a  
33 computer program or computer software solely for personal use, the  
34 program or software had a retail value of less than \$1,000 and the actor  
35 did not disseminate or disclose the program or software to any other  
36 person.

37 (cf: P.L.1984, c.184, s.12)

38

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

41 13. For the purpose of prosecution under this act, and in addition to  
42 determining the situs of the offense pursuant to the provisions of  
43 N.J.S.2C:1-3, the situs of an offense of [theft] computer criminal  
44 activity shall also be the location of the computer, computer  
45 storagemedium, computer program, computer software, computer

1 equipment, computer system or computer network which is accessed,  
2 or where the [terminal] computer, computer storage medium,  
3 computer program, computer software, computer equipment, computer  
4 system, computer network or other device used in the offense is  
5 situated, or where the actual damage occurs.

6 (cf: P.L.1984, c.184, s.13)

7

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

9 2C:20-2. Consolidation of Theft Offenses; Grading; Provisions  
10 Applicable to Theft Generally.

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

23 b. Grading of theft offenses.

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

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

26 (b) The property is taken by extortion;

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

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

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

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

36 (a) The amount involved exceeds \$500.00 but is less than  
37 \$75,000.00;

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

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

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

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

1 (f) It is by threat not amounting to extortion;

2 (g) It is of a public record, writing or instrument kept, filed or  
3 deposited according to law with or in the keeping of any public office  
4 or public servant;

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

9 (i) The property stolen is any real or personal property related to,  
10 necessary for, or derived from research, regardless of value, including,  
11 but not limited to, any sample, specimens and components thereof,  
12 research subject, including any warm-blooded or cold-blooded animals  
13 being used for research or intended for use in research, supplies,  
14 records, data or test results, prototypes or equipment, as well as any  
15 proprietary information or other type of information related to research;

16 (j) The property stolen is a New Jersey Prescription Blank as  
17 referred to in R.S.45:14-14; or

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

20 (3) Theft constitutes a crime of the fourth degree if the amount  
21 involved is at least \$200.00 but does not exceed \$500.00. If the  
22 amount involved was less than \$200.00 the offense constitutes a  
23 disorderly persons offense.

24 (4) The amount involved in a theft or computer criminal activity  
25 shall be determined by the trier of fact. The amount shall include, but  
26 shall not be limited to, the amount of any State tax avoided, evaded or  
27 otherwise unpaid, improperly retained or disposed of. Amounts  
28 involved in thefts or computer criminal activities committed pursuant  
29 to one scheme or course of conduct, whether from the same person or  
30 several persons, may be aggregated in determining the grade of the  
31 offense.

32 c. Claim of right. It is an affirmative defense to prosecution for theft  
33 that the actor:

34 (1) Was unaware that the property or service was that of another;

35 (2) Acted under an honest claim of right to the property or service  
36 involved or that he had a right to acquire or dispose of it as he did; or

37 (3) Took property exposed for sale, intending to purchase and pay  
38 for it promptly, or reasonably believing that the owner, if present,  
39 would have consented.

40 d. Theft from spouse. It is no defense that theft or computer  
41 criminal activity was from or committed against the actor's spouse,  
42 except that misappropriation of household and personal effects, or  
43 other property normally accessible to both spouses, is theft or  
44 computer criminal activity only if it occurs after the parties have ceased  
45 living together.

46 (cf: P.L.1999, c.95, s.2)

47

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

3 7. Referral to another court without juvenile's consent.

4 a. On motion of the prosecutor, the court shall, without the consent  
5 of the juvenile, waive jurisdiction over a case and refer that case from  
6 the Superior Court, Chancery Division, Family Part to the appropriate  
7 court and prosecuting authority having jurisdiction if it finds, after  
8 hearing, that:

9 (1) The juvenile was 14 years of age or older at the time of the  
10 charged delinquent act; and

11 (2) There is probable cause to believe that the juvenile committed  
12 a delinquent act or acts which if committed by an adult would  
13 constitute:

14 (a) Criminal homicide other than death by auto, strict liability for  
15 drug induced deaths, pursuant to N.J.S.2C:35-9, robbery which would  
16 constitute a crime of the first degree, carjacking, aggravated sexual  
17 assault, sexual assault, aggravated assault which would constitute a  
18 crime of the second degree, kidnapping or aggravated arson; or

19 (b) A crime committed at a time when the juvenile had previously  
20 been adjudicated delinquent, or convicted, on the basis of any of the  
21 offenses enumerated in subsection a.(2)(a); or

22 (c) A crime committed at a time when the juvenile had previously  
23 been sentenced and confined in an adult penal institution; or

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

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

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

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

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

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

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

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

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

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

20       d. A motion seeking waiver shall be filed by the prosecutor within  
21 30 days of receipt of the complaint. This time limit shall not, except for  
22 good cause shown, be extended.

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

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

36 (cf: P.L.1999, c.373)

37

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

41

42       10. This act shall take effect immediately.

STATEMENT

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This bill would update the State law with regard to computer crime to reflect various technological changes, including the development of the Internet, that have occurred since enactment of the computer crime law in 1984, P.L.1984, c.184(C.2C:20-23 et al.) (hereinafter the "computer law").

The bill amends the computer law to revise the definition of "computer" to be consistent with relevant federal law and to revise the definition of "data" to address the issue of data stored on media that are not within the computer such as removable disks and external disk drives. In addition, the bill adds definitions of the "Internet" and "personal identifying information" to section 2 of the computer law. The bill also defines the terms "alter, damage or destroy" and "user of computer services" and makes other technical clarifications.

The bill amends section 3 of the computer law to include as "value," for the purpose of recovering loss, the cost of repair or remediation of any damage caused by an unlawful act and the gross revenue from a lost business opportunity attributable to that unlawful act. The bill also specifies that the value of a lost business opportunity be determined by comparison to gross revenue before the opportunity was lost.

Under the provisions of the bill, computer criminal activity would range from a third degree crime for access to a computer without authorization to a first degree crime where a violation results in the substantial interruption or impairment of public communication, transportation, supply of water, gas or power or other public service; or damages or loss in excess of \$250,000 or significant bodily injury to any person. The bill also provides for a mandatory minimum sentence in certain circumstances, including if a person is convicted of a crime of the first degree or if the victim is a government agency.

The bill clarifies that the situs of an offense related to computer criminal activity is both the location of the computer that was accessed and the location where the computer used in the offense is situated.

The bill provides that computer criminal activity offenses be consolidated in the same manner that theft offenses are consolidated. The substitute further provides that a juvenile who is charged with computer criminal activity that would be a crime of the first or second degree may be referred to another court without the juvenile's consent.

ASSEMBLY TELECOMMUNICATIONS AND UTILITIES  
COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 1728**

with committee amendments

**STATE OF NEW JERSEY**

DATED: JANUARY 9, 2003

The Assembly Telecommunications and Utilities Committee reports favorably and with committee amendments Assembly Bill No. 1728.

As amended, this bill would update the State law with regard to computer crime to reflect various technological changes, including the development of the Internet, that have occurred since enactment of the computer crime law in 1984, P.L.1984, c.184 (C.2C:20-23 et al.). The committee emphasizes that it is not the intent of this bill to interfere with or prohibit terms or conditions in a contract or license related to any data, data base, computer, computer storage medium, computer program, computer software, computer system, computer equipment, computer network or hardware designed to allow any of the above to operate in the ordinary course of a lawful business, or that is designed to allow an owner or authorized holder of information to protect data information or rights in it.

The bill amends section 2 of P.L.1984, c.184 (C.2C:20-23) (section 1 of the bill) to revise the definition of "computer" to be consistent with relevant federal law and to revise the definition of "data" to address the issue of data stored on media that are not within the computer such as removable disks and external disk drives. In addition, the bill adds definitions of "Internet," "personal identifying information," "alter, damage or destroy", and "user of computer services" and makes other technical clarifications.

The bill amends section 3 of P.L.1984, c.184 (C.2C:20-24) (section 2 of the bill) to include as "value," for the purpose of recovering loss, the cost of repair or remediation of any damage caused by an unlawful act and the gross revenue from a lost business opportunity attributable to that unlawful act. The bill also specifies that the value of a lost business opportunity be determined by comparison to gross revenue before the opportunity was lost.

Under the provisions of section 4 of P.L.1984, c.184 (C.2C:20-25) (section 3 of the bill), computer criminal activity would range from a third degree crime for access to a computer without authorization to a first degree crime where a violation results in the substantial interruption or impairment of public communication, transportation,

supply of water, gas or power or other public service; or damages or loss in excess of \$250,000 or significant bodily injury to any person. The bill also provides for a mandatory minimum sentence in certain circumstances in subsections g. and h., including if a person is convicted of a crime of the first degree or if the victim is a government agency.

The bill amends section 13 of P.L.1984, c.184 (C.2C:20-34)(section 6 of the bill) to clarify that the situs of an offense related to computer criminal activity is both the location of the computer that was accessed and the location where the computer used in the offense is situated.

The bill provides that computer criminal activity offenses may be consolidated in the same manner as theft offenses by amending N.J.S.2C:20-2. Note that the gradation of computer criminal activity is set forth specifically in section 4 of P.L.1984, c.184 (C.2C:20-25) (section 3 of the bill) and may not correspond to the gradation of theft offenses as it does under existing law. The bill provides that a juvenile who is charged with first or second degree computer criminal activity may be referred to another court without the juvenile's consent by amending section 7 of P.L.1982, c.77 (C.2A:4A-26)(section 8 of the bill).

As amended, by the Assembly Telecommunications and Utilities Committee, this bill is identical to Senate Bill No. 1355(1R).

#### COMMITTEE AMENDMENTS

The committee amendments add a definition of " authorization" to be consistent with federal law and clarify that authorized access in the ordinary course of business is not intended to be reached by the criminal provisions of the bill. See also the intent language set forth previously in paragraph 2 of this statement. The amendments expand the definition of "alter, damage or destroy" to include the introduction of a "computer contaminant" to clarify that "viruses or worms" are included. In addition, the committee amendments omit "solely for personal use" in the affirmative defense language in section 5 of the bill.