

HI Electronic Crime Statutes

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PART IX. COMPUTER CRIME

§708-890 Definitions. As used in this part, unless the context otherwise requires:

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

"Computer" means any electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions, and includes all computer equipment connected or related to such a device in a computer system or computer network, but shall not include an automated typewriter or typesetter, a portable hand-held calculator, or other similar device.

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

"Computer network" means two or more computers or computer systems, interconnected by communication lines, including microwave, electronic, or any other form of communication.

"Computer program" or "software" means a set of computer-readable instructions or statements and related data that, when executed by a computer system, causes the computer system or the computer network to which it is connected to perform computer services.

"Computer services" includes but is not limited to the use of a computer system, computer network, computer program, data prepared for computer use, and data contained within a computer system or computer network.

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

"Damage" means any impairment to the integrity or availability of data, a program, a system, a network, or computer services.

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

"Obtain information" includes but is not limited to mere observation of the data.

"Property" includes financial instruments, data, computer software, computer programs, documents associated with computer systems, money, computer services, or anything else of value.

"Rule of court" means any rule adopted by the supreme court of this State, the Federal Rules of Civil Procedure, or the Federal Rules of Criminal Procedure.

"Statute" means any statute of this State or the federal government.

"Without authorization" means without the permission of or in excess of the permission of an owner, lessor, or rightful user or someone licensed or privileged by an owner, lessor, or rightful user to grant the permission. [L 1992, c 225, pt of §2; am L 2001, c 33, §4; am L 2003, c 3, §17]

[§708-891] Computer fraud in the first degree. (1) A person commits the offense of computer fraud in the first degree if the person knowingly, and with intent to defraud, accesses a computer without authorization and, by means of such conduct, obtains or exerts control over the property of another.

(2) In a prosecution for computer fraud in the first degree, it is a defense that the object of the fraud and the property obtained consists only of the use of the computer and the value of such use is not more than \$300 in any one-year period.

(3) Computer fraud in the first degree is a class B felony. [L 2001, c 33, pt of §1]

[\$708-891.5] Computer fraud in the second degree. (1) A person commits the offense of computer fraud in the second degree if the person knowingly, and with the intent to defraud, transfers, or otherwise disposes of, to another, or obtains control of, with the intent to transfer or dispose of, any password or similar information through which a computer, computer system, or computer network may be accessed.

(2) Computer fraud in the second degree is a class C felony. [L 2001, c 33, pt of §1]

[\$708-892] Computer damage in the first degree. (1) A person commits the offense of computer damage in the first degree if:

(a) The person knowingly causes the transmission of a program, information, code, or command, and thereby knowingly causes unauthorized damage to a computer, computer system, or computer network; or

(b) The person intentionally accesses a computer, computer system, or computer network without authorization and thereby knowingly causes damage.

(2) As used in this section, the "damage" must:

(a) Result in a loss aggregating at least \$5,000 in value, including the costs associated with diagnosis, repair, replacement, or remediation, during any one-year period to one or more individuals;

(b) Result in the modification or impairment, or potential modification or impairment, of the medical examination, diagnosis, treatment, or care of one or more individuals;

(c) Result in physical injury to any person;

(d) Threaten public health or safety;
or

(e) Impair the administration of
justice.

(3) Computer damage in the first degree is a class B
felony. [L 2001, c 33, pt of §1]

[\$708-892.5] Computer damage in the second degree. (1) A
person commits the offense of computer damage in the second
degree if the person knowingly accesses a computer,
computer system, or computer network without authorization
and thereby recklessly causes damage.

(2) Computer damage in the second degree is a class C
felony. [L 2001, c 33, pt of §1]

**[\$708-893] Use of a computer in the commission of a
separate crime.** (1) A person commits the offense of use of
a computer in the commission of a separate crime if the
person knowingly uses a computer to identify, select,
solicit, persuade, coerce, entice, induce, or procure the
victim or intended victim of the following offenses:

(a) Section 707-726, relating to
custodial interference in the first
degree;

(b) Section 707-727, relating to
custodial interference in the second
degree;

(c) Section 707-731, relating to sexual
assault in the second degree;

(d) Section 707-732, relating to sexual
assault in the third degree;

(e) Section 707-733, relating to sexual
assault in the fourth degree;

(f) Section 707-751, relating to
promoting child abuse in the second
degree; and

(g) Section 712-1215, relating to promoting pornography for minors.

(2) Use of a computer in the commission of a separate crime is an offense one class or grade, as the case may be, greater than the offense facilitated. Notwithstanding any other law to the contrary, a conviction under this section shall not merge with a conviction for the separate crime. [L 2001, c 33, pt of §1]

COMMENTARY ON §§708-890 TO 893

Act 225, Session Laws 1992, repealed former §§708-890 to 896 and added this part to expand the degree of protection afforded to individuals and organizations from persons who tamper, interfere, damage, and gain unauthorized access to their computers, computer systems, software, and data. Finding that the growth in computer use has resulted in a similar growth in unauthorized access to computer systems, the legislature created two new offenses of "computer fraud" and "unauthorized computer use", both class C felonies. The legislature, however, recognized that other people, including harmless pranksters, students, or curious computer hackers, may gain unauthorized access to computer systems and do no damage to those systems. Although these people have committed a serious breach of privacy, they do not deserve to be charged with a class C felony; the legislature therefore created the affirmative defense of "entry without disruption", authorizing a court to dismiss a prosecution if, having regard for the nature of the alleged conduct and attendant circumstances, it finds that the defendant's conduct did not actually cause harm or damage to a computer system or network. The court must also file a written statement of its reasons for dismissal. Conference Committee Report No. 29.

[§708-894] Forfeiture of property used in computer crimes.

Any property used or intended for use in the commission of, attempt to commit, or conspiracy to commit an offense under this part, or which facilitated or assisted such activity, shall be forfeited subject to the requirements of chapter 712A. [L 2001, c 33, pt of §1]

[§708-895] Jurisdiction. For purposes of prosecution under this part, a person who causes, by any means, the access of a computer, computer system, or computer network in one jurisdiction from another jurisdiction is deemed to have

personally accessed the computer, computer system, or computer network in each jurisdiction. [L 2001, c 33, pt of §1]

[\$708-895.5] Unauthorized computer access in the first degree. (1) A person commits the offense of unauthorized computer access in the first degree if the person knowingly accesses a computer, computer system, or computer network without authorization and thereby obtains information, and:

(a) The offense was committed for the purpose of commercial or private financial gain;

(b) The offense was committed in furtherance of any other crime;

(c) The value of the information obtained exceeds \$5,000; or

(d) The information has been determined by statute or rule of court to require protection against unauthorized disclosure.

(2) Unauthorized computer access in the first degree is a class B felony. [L 2001, c 33, pt of §1]

[\$708-895.6] Unauthorized computer access in the second degree. (1) A person commits the offense of unauthorized computer access in the second degree if the person knowingly accesses a computer, computer system, or computer network without authorization and thereby obtains information.

(2) Unauthorized computer access in the second degree is a class C felony. [L 2001, c 33, pt of §1]

[\$708-895.7] Unauthorized computer access in the third degree. (1) A person commits the offense of unauthorized computer access in the third degree if the person knowingly accesses a computer, computer system, or computer network without authorization.

(2) Unauthorized computer access in the third degree is a misdemeanor. [L 2001, c 33, pt of §1]

COMMENTARY ON §§708-890 TO 895.7

Act 33, Session Laws 2001, strengthened the State's computer crime laws, by, among other things, replacing statutes relating to computer crimes with several new offenses and provisions to deter computer fraud, damage, and other computer-related perpetrations, allowing the forfeiture of property used in computer crimes, and updating computer-related definitions to reflect modern technology and for clarity. The legislature found that society was adopting at a rapid pace, computer technology to conduct activities of daily living. Computer technology was being utilized not only for purposes of business and recreation, but also for criminal activity. Thus, computer-related criminal activity was on the rise as society's dependence on computers increased. Senate Standing Committee Report No. 1508.

Act 3, Session Laws 2003, made a technical amendment to §708-890, by deleting the brackets around the word "retrieve" in the definition of "access".