

COMPUTER TAMPERING IN THE THIRD DEGREE
(Alter or Destroy Computer Material)
Penal Law § 156.25(5)
(Committed on or after Dec 12, 2021)

The (*specify*) count is Computer Tampering in the Third Degree.

Under our law, a person is guilty of Computer Tampering in the Third Degree¹ when he or she uses, causes to be used, or accesses a computer, computer service, or computer network without authorization and he or she intentionally alters in any manner or destroys computer data or a computer program of another person, and he or she intentionally enters or alters in any manner or destroys computer material indicating that a person did or did not receive a vaccination against COVID-19.

[Add if applicable:

It is a defense that the defendant had reasonable grounds to believe that he or she had the right to alter in any manner or destroy the computer data or the computer program.]²

The following terms used in that definition have a special meaning:

COMPUTER means a device or group of devices which, by manipulation of electronic, magnetic, optical or electrochemical impulses, pursuant to a computer program, can automatically perform arithmetic, logical, storage or retrieval operations with or on computer data, and includes any connected or directly related device, equipment or facility which enables

¹ At this point, the statute reads “when he commits the crime of computer tampering in the fourth degree and.” This instruction substitutes the definition of computer tampering in the fourth degree.

²Penal Law §156.50(2).

such computer to store, retrieve or communicate to or from a person, another computer or another device the results of computer operations, computer programs or computer data.³

COMPUTER SERVICE means any and all services provided by or through the facilities of any computer communication system allowing the input, output, examination, or transfer, of computer data or computer programs from one computer to another.⁴

COMPUTER NETWORK means the interconnection of hardware or wireless communication lines with a computer through remote terminals, or a complex consisting of two or more interconnected computers.⁵

COMPUTER DATA is property and means a representation of information, knowledge, facts, concepts or instructions which are being processed, or have been processed in a computer and may be in any form, including magnetic storage media, punched cards, or stored internally in the memory of the computer.⁶

A COMPUTER PROGRAM is property and means an ordered set of data representing coded instructions or statements that, when executed by computer, cause the computer to process data or direct the computer to perform one or more computer operations or both and may be in any form, including magnetic storage media, punched cards, or stored internally in the memory of the computer.⁷

³Penal Law §156.00(1).

⁴Penal Law §156.00(4).

⁵ Penal Law §156.00(6).

⁶ Penal Law § 156.00(3).

⁷ Penal Law § 156.00(2).

5. "Computer material" is property and means any computer data or computer program which:

Select as appropriate:

(a) contains records of the medical history or medical treatment of an identified or readily identifiable individual or individuals. [This term shall not apply to the gaining access to or duplication solely of the medical history or medical treatment records of a person by that person or by another specifically authorized by the person whose records are gained access to or duplicated]; or

(b) contains records maintained by the state or any political subdivision thereof or any governmental instrumentality within the state which contains any information concerning a person⁸ which because of name, number, symbol, mark or other identifier, can be used to identify the person and which is otherwise prohibited by law from being disclosed. [This term shall not apply to the gaining access to or duplication solely of records of a person by that person or by another specifically authorized by the person whose records are gained access to or duplicated]; or

(c) is not and is not intended to be available to anyone other than the person or persons rightfully in possession thereof or selected persons having access thereto with his, her or their consent and which accords or may accord such rightful possessors an advantage over competitors or other persons who do not have knowledge or the benefit thereof.⁹

ACCESS means to instruct, communicate with, store data in, retrieve from, or otherwise make use of any resources of a

8 At this point the statute specifies "person," as defined in Penal Law § 10.00(7). If necessary, add that definition.

9 Penal Law §156.00(5).

computer, physically, directly or by electronic means.¹⁰

WITHOUT AUTHORIZATION means to use or to access a computer, computer service or computer network without the permission of the owner or lessor or someone licensed or privileged by the owner or lessor where the actor¹¹ knew that his or her use or access was without permission or after actual notice to such person that such use or access was without permission. It shall also mean the access of a computer service by a person without permission where such person knew that such access was without permission or after actual notice to such person, that such access was without permission.¹²

[Add if applicable:

Under our law, proof that a person used or accessed a computer, computer service or computer network through the knowing use of a set of instructions, code or computer program that bypasses, defrauds or otherwise circumvents a security measure installed or used with the user's authorization on the computer, computer service or computer network shall be presumptive evidence that such person used or accessed such computer, computer service or computer network without authorization.¹³

What this means is that if the People have proven beyond a reasonable doubt that the person

¹⁰ Penal Law §156.00(7).

¹¹ The words "the actor" have been substituted for the statutory language "such person" for clarity.

¹² Penal Law § 156.00(8).

¹³ Penal Law §156.00(8).

used or accessed a computer, computer service or computer network through the knowing use of a set of instructions, code or computer program that bypasses, defrauds or otherwise circumvents a security measure installed or used with the user's authorization on the computer, computer service or computer network, then you may, but you are not required to, infer from those facts that such person used or accessed such computer, computer service or computer network without authorization.]

INTENT means conscious objective or purpose. Thus, a person INTENTIONALLY alters in any manner or destroys computer data or a computer program of another person, and intentionally enters or alters in any manner or destroys computer material indicating that a person did or did not receive a vaccination against COVID-19 when that person's conscious objective or purpose is to do so.¹⁴

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, [both/each] of the following [two/three] elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name), used, caused to be used, or accessed a computer, computer service, or computer network without authorization;
2. That the defendant altered in any manner or destroyed computer data or a computer program of another person and entered or altered computer material indicating that a person did or did not receive

¹⁴ See Penal Law § 15.05(1).

a vaccination against COVID-19; [and]

3. That the defendant did so intentionally; [and]

[Add If Applicable:

4. That the defendant did not have reasonable grounds to believe that he/she had the right to alter¹⁵ in any manner or destroy the computer data or the computer program].

If you find the People have proven beyond a reasonable doubt [both / each] of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt [either one / any one or more] of those elements, you must find the defendant not guilty of this crime.

¹⁵ When the Legislature added “enter or” alter to the definition of the crime, it did not amend the defense to include the words: “enter or” alter. L. 2022, c. 24.