

COMPUTER TAMPERING IN THE SECOND DEGREE
(Medical Records)
Penal Law § 156.26(2)
(Committed on or after Nov. 1, 2008)

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

Under our law, a person is guilty of computer tampering in the second degree when¹ 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 material that contains records of the medical history or medical treatment of an identified or readily identifiable individual or individuals and as a result of such alteration or destruction, such individual or individuals suffer serious physical injury, and he or she is aware of and consciously disregards a substantial and unjustifiable risk that such serious physical injury may occur.

[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

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At this point the statute reads “he commits the crime of computer tampering in the fourth degree.” The charge substitutes the appropriate language from computer tampering in the fourth degree. See Penal Law § 156.20.

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Penal Law §156.50(2).

enables 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 hardwire or wireless communication lines with a computer through remote terminals, or a complex consisting of two or more interconnected computers.⁵

For purposes of this crime, COMPUTER MATERIAL is property and means any computer data or computer program which contains records of the medical history or medical treatment of an identified or readily identifiable individual or individuals. This term does 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.⁶

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

3 Penal Law §156.00(1).

4 Penal Law §156.00(4).

5 Penal Law §156.00(6).

6 Penal Law § 156.00(5).

magnetic storage media, punched cards, or stored internally in the memory of the computer.⁷

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.⁸

ACCESS means to instruct, communicate with, store data in, retrieve from, or otherwise make use of any resources of a computer, physically, directly or by electronic means.⁹

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 actor¹⁰ 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.¹¹

7 Penal Law § 156.00(3).

8 Penal Law § 156.00(2).

9 Penal Law §156.00(7).

10 The words “the actor” have been substituted for the statutory language “such person” for clarity.

11 Penal Law § 156.00(8).

[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.¹²

What this means is that if the People have proven beyond a reasonable doubt that the 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, 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.]

SERIOUS PHYSICAL INJURY means impairment of a person's physical condition which creates a substantial risk of death or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.¹³

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Penal Law § 156.00(8).

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See Penal Law § 10.00(10).

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 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, each of the following [four/five] 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 and he/she altered in any manner or destroyed computer material that contained records of the medical history or medical treatment of an identified or readily identifiable individual or individuals;
[and]
2. That the defendant did so intentionally; [and]
- [ADD IF IN ISSUE:*
3. That the defendant did not have reasonable grounds to believe that he/she had the right to alter in any manner or destroy the computer material;]
- [3/4]. That as a result of such alteration or destruction, such individual or individuals suffered serious physical injury; and
- [4/5]. That the defendant was aware of and consciously disregarded a substantial and unjustifiable risk that such serious physical injury might occur.

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See Penal Law § 15.05(1).

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