

**Computer Tampering
Third Degree
(E felony)
(Intent to Commit a Felony)
Penal Law 156.25(1)
(Committed on or after Nov. 1,1993)**

The _____ count is Computer Tampering in the Third Degree.

Under our law a person is guilty of computer tampering in the third degree when¹ that person uses or causes to be used a computer or computer service and having no right to do so he or she intentionally alters in any manner or destroys computer data or a computer program of another person and he or she does so with an intent to commit or further the commission of any felony.

[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

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms: “computer,” “computer service,” “intent,” “computer data,” “computer program” and “felony”.

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

¹ 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.

²Penal Law 156.50(2).

device, equipment or facility which 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

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 cause such damage by that means.⁵ And, a person acts with INTENT to commit or attempt to commit or further the commission of any felony when his or her conscious objective or purpose is to do so.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 magnetic storage media, punched cards, or stored internally in the memory of the computer.⁷

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,

³Penal Law 156.00(1).

⁴Penal Law 156.00(4).

⁵ See Penal Law § 15.05(1).

⁶ See Penal Law § 15.05(1).

⁷Penal Law 156.00(3).

punched cards, or stored internally in the memory of the computer.⁸

A FELONY includes (specify).⁹ (*Add the appropriate definition(s).*)

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 three elements:

1. That on or about *(date)*, in the county of *(county)*, the defendant, *(defendant's name)*, used or caused to be used a computer or computer service;
2. That, having no right to do so, the defendant thereby intentionally altered in any manner or destroyed computer data or a computer program of another person; [and]
3. That the defendant did so with an intent to commit or attempt to commit or further the commission of a felony; [and]

[Add if applicable:

4. 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 data or the computer program.]

Therefore, if you find that the People have proven beyond a reasonable doubt each of these elements, you must find the defendant guilty of the crime of Computer Tampering in the Third Degree as charged in the _____ count.

⁸Penal Law 156.00(2).

⁹ See Penal Law § 156.00(7).

On the other hand, if you find that the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of the crime of Computer Tampering in the Third Degree as charged in the ____ count.