



**NEW YORK  
CITY BAR**

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**REPORT ON LEGISLATION BY  
THE COMMITTEE ON CRIMINAL JUSTICE OPERATIONS**

**A.5440  
S.885**

**M. of A. Lentol  
Sen. Krueger**

An act to amend the criminal procedure law, in relation to expanding the geographical jurisdiction for crimes closely related to identity theft or unlawful possession of personal identification information

**THIS BILL IS APPROVED**

**Introduction**

This report is respectfully submitted by the Committee on Criminal Justice Operations (the “Committee”) of the New York City Bar Association. The Association is an organization of over 23,000 lawyers and judges dedicated to improving the administration of justice. The members of the Committee on Criminal Justice Operations include prosecutors and criminal defense attorneys who analyze the legal, social and public policy aspects of criminal justice issues facing New Yorkers today.

The Committee fully supports A.5440/S.885, which amends the Criminal Procedure Law to establish enhanced venue provisions for the offenses of identity theft, unlawful possession of personal identification information, and crimes closely related thereto. The bill does this by permitting the underlying identity theft crimes “together with an additional offense or offenses arising from the same criminal transaction”<sup>1</sup> to be prosecuted in the county where the offense – or part of the offense - took place, in the county in which the person who suffered financial loss resided at the time of the offense, or in the county where the person whose personal identification information was used resided at the time of the offense.

The Committee supports the bill because it promotes judicial efficiency without sacrificing fairness to the defendant.

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<sup>1</sup> The definition of “criminal transaction” is taken from Criminal Procedure Law § 40.10(2), which provides: “When conduct which establishes at least one offense, and which is comprised of two or more or a group of acts either (a) so closely related and connected in point of time and circumstance of commission as to constitute a single criminal incident, or (b) so closely related in criminal purpose or objective as to constitute elements or integral parts of a single criminal venture.”

## **Background**

At common law and under the State Constitution, a defendant has the right to be tried in the county where the crime was committed unless the Legislature has provided otherwise. See People v. Zimmerman, 9 N.Y.3d 421, 426 (2007); People v. Moore, 46 N.Y. 1, 6 (1978); People v. Goldswor, 39 N.Y.2d 656, 659-61 (1976); N.Y. Const., Art 1, §2.<sup>2</sup>

In 2002, the crimes of identity theft [P.L. §§190.78-190.80] and unlawful possession of personal identification information [P.L. §§190.81-190.83] were enacted. Identity theft is divided into three degrees. Identity theft in the third degree is the core offense and it is an A misdemeanor. One or more aggravators elevate the core offense to the second or first degree, E and D felonies, respectively. Importantly, the E felony proscribes the theft of “goods, money, property or services or [credit used] in an aggregate amount” exceeding \$500. P.L. §190.79(1). The threshold aggregated value for the D felony is \$2,000. P.L. §190.80(1).

In connection with the enactment of such crimes, the geographical jurisdiction statute of the Criminal Procedure Law, C.P.L. §20.40, was amended to include subsection (4)(l), which provides:

An offense of identity theft or unlawful possession of personal identification information may be prosecuted (i) in any county in which part of the offense took place regardless of whether the defendant was actually present in such county, or (ii) in the county in which the person who suffers financial loss resided at the time of the commission of the offense, or (iii) in the county where the person whose personal identification information was used in the commission of the offense resided at the time of the commission of the offense...

“This provision grants geographical jurisdiction to a wide variety of counties that would not otherwise have jurisdiction for prosecution of the offense under generally controlling principles, thus helping to assure effective enforcement of this relatively new widespread type of offense.” Preiser, Practice Commentary, C.P.L. §20.40 (2003).

## **The Committee Supports Further Amendment of CPL §20.40 to Include Related Crimes**

While the new laws and the venue amendment have helped in the prosecution of identity theft, other crimes - some of a higher felony grade - relying on the same facts do not presently enjoy the enhanced venue options. As a result, prosecutions for these attendant crimes are frequently tried in separate counties - which requires a great deal of duplicative work.

The Committee believes that subsection (4)(l) should be amended to allow for the same, greater venue to any offense that is closely related to identity theft. Thus, where appropriate, prosecutors would have the option of joining offenses such as criminal impersonation (see P.L. §190.25), criminal possession of stolen property (see P.L. §§165.40-54), scheme to defraud (see

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<sup>2</sup> A well-known legislative example is Section 177-a of the Judiciary Law, which authorized “special narcotics parts in the supreme court to hear and determine narcotics cases from within counties wholly contained” by New York City, effectively removing county walls within New York City for prosecuting narcotics indictments.

P.L. §§190.60-65), falsification of business records (P.L. §§175.05-10), forgery (see P.L. §§170.05-15), and criminal possession of a forged instrument (P.L. §170.20-25, 170.30). One prosecution based on one core set of facts best promotes efficiency without impinging on the rights afforded to the defendant. Indeed, the attendant crimes are clearly interrelated and properly joined in subject matter. See C.P.L. §200.20(2)(a); C.P.L. §40.10(2). Further, multiple convictions before the same court will likely result in concurrent sentences. See P.L. §70.25(2). Economy of resources for the parties and the courts will be better served if this bill is enacted into law.

### **Conclusion**

In 2002, the Legislature deemed it necessary to enact the offenses of identity theft and unlawful possession of personal identification information. To assure effective prosecution thereof, the Legislature also expanded the geographical jurisdiction opportunities.

The Committee believes that a single set of facts could result in charges of the new crimes of identity theft or unlawful possession of personal identification information and the more-traditional charges of larceny, criminal possession of stolen property, criminal solicitation, scheme to defraud, and forgery, for examples. Because the charges would be factually inter-related and may be legally joined in one accusatory instrument, and resources would thereby be conserved, the committee believes that the geographical jurisdiction of the traditional, closely related crimes should be expanded.

For these reasons, the Committee supports A.5440/S.885 and urges its passage.

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