



NEW YORK
CITY BAR

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COMMITTEE ON CRIMINAL JUSTICE OPERATIONS

**REPORT RECOMMENDING LEGISLATION TO
EXPAND GEOGRAPHICAL JURISDICTION FOR
CRIMES ATTENDANT TO IDENTITY THEFT**

Introduction

This report is respectfully submitted by the Committee on Criminal Justice Operations (the “Committee”) of the Association of the Bar of the City of New York. 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 recommends an amendment to subsection 20.40(4)(l) of the Criminal Procedure Law, which established enhanced venue provisions for the offenses of identity theft and unlawful possession of personal identification information.¹ Specifically, the Committee recommends the following additional language (in italics):

An offense of identity theft or unlawful possession of personal identification information, *and any other offense based on the allegations underlying either of those offenses*, may be prosecuted in...

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, §2.²

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

¹ A proposed bill is attached.

² 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.

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 Need for Further Amendment of CPL §20.40

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 therefore explored the possibility that subsection (4)(l) be amended to allow for the same, greater venue to any offense sounding in identity theft. Thus, prosecutors could join 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 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), for examples. The Committee found that one prosecution based on one core set of facts best promoted efficiency without sacrificing fairness 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). 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.³

Finally, the Committee considered and rejected the idea that the court may, in its discretion, transfer the attendant crimes to another county in the event that all offenses of identity theft or unlawful possession of personal identification information are dismissed. Were the

³ This change in the venue statute would also address a concern that, presently, attendant offenses tried later may be subject to double jeopardy dismissal as part of the same “criminal transaction” under C.P.L. §40.10(2). See C.P.L. §40.20(2).

Legislature to agree that crimes “sounding in” identity theft should enjoy broader venue opportunities presumably to further “effective enforcement of this relatively new widespread type of offense,” the Committee does not see the wisdom in restricting those opportunities simply because offenses under P.L. §§190.78-190.80 [identity theft] and P.L. §§190.81-190.83 [unlawful possession of personal identification information] no longer remained in the charging instrument.

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 has determined 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, attendant crimes should be expanded.

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STATE OF NEW YORK

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IN ASSEMBLY

_____, 2009

Introduced by M. of A. _____ -

AN ACT to amend criminal procedure law, in relation to expanding geographical jurisdiction for crimes attendant to identity theft.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph (1) of subdivision 4 of section 20.40 of the criminal procedure law, as added by chapter 619 of the laws of 2002 and amended by chapter 346 of the laws of 2007, is amended to read as follows:

(1) An offense of identity theft or unlawful possession of personal identification information, **and any other offense based on the allegations underlying either of those offenses**, 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. The law enforcement agency of any such county shall take a police report of the matter and provide the complainant with a copy of such report at no charge.

§ 2. This act shall take effect immediately.